

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT

Maxine Mosley and Donna Soucy

v.

David Scanlan, New Hampshire Secretary of State

Docket No.: 217-2022-CV-01067

ORDER ON REQUEST FOR PRELIMINARY INJUNCTION

The plaintiffs, Maxine Mosley and Donna Soucy, filed suit against the defendant, New Hampshire Secretary of State, David Scanlan, requesting preliminary and permanent injunctive relief to enjoin the defendant from conducting a review of the race for State Representative Hillsborough District 16 noticed for November 21, 2022 at 4:00 pm. Larry Gagne filed a motion to intervene, which the Court granted. The Court held a hearing on the plaintiff's request for preliminary relief on November 21, 2022 at 1:00 pm. Prior to the hearing, the defendant delayed any further review until the morning of November 22, 2022 to allow this complaint to be considered. For the following reasons, the Court DENIES the plaintiffs' request for preliminary relief and ORDERS the defendant to conduct a review of all votes cast in the race for State Representative Hillsborough District 16 pursuant to the Rules of Procedure for Recounts (Court index #1, Ex. C.).

Factual Background

On November 8, 2022, the State of New Hampshire conducted a general election. (Court index #1 ¶ 25.) The ballot in Hillsborough District 16 listed four candidates for State Representative. (Id. ¶ 26.) Each voter could select two out of the four candidates. The two candidates receiving the most votes would be elected to the New Hampshire House of

Representative. While the defendant's announcement of Ms. Mosley as the winner presents complexity, the greatest weight must be attributed to the complete and lawful count of the votes cast to determine the will of the people. The defendant's alleged clerical error which may have altered the results of the recount tally compels this Court to allow additional review of the ballots to determine that the expressed choice of the voters is the final outcome. Further, there is minimal, if any, prejudice as no candidate has been sworn into office, engaged in legislative functions, and there is time to remedy any potential errors in the recount before the next legislative session. This extraordinary circumstance requires an atypical remedy. The Court permits the defendant to continue his review of the recount but such review must include all ballots cast, not just ballots cast for certain candidates. The process shall ensure full transparency and abide by the rules promulgated by the defendant in the Rules of Procedure for Recounts applied to the initial recount.

The plaintiffs fail on this first prong of the preliminary injunction test because they did not demonstrate a likelihood of success on the merits. The Court need not address whether there is an adequate remedy at law nor whether the plaintiffs face an immediate danger of irreparable harm. See Canty v. Hopkins, 146 N.H. 151, 156 (2001) (holding that the Court need not consider party's remaining arguments where one or more was dispositive of the case).

Conclusion

The Court DENIES the plaintiffs' request for preliminary relief. The defendant is ordered to conduct his noticed review of the State Representative Hillsborough District 16 election pursuant to the Rules of Procedure for Recounts utilized for the original recount in this matter. The defendant must review all ballots, not just those where voters selected Mr. Infantine and Mr. Gagne.