

The State of New Hampshire

ROCKINGHAM COUNTY

SUPERIOR COURT

New Hampshire Democratic Party

v.

William Gardner, Secretary of State

2016-CV-

ORDER

Plaintiff, the New Hampshire Democratic Party, seeks injunctive relief in the form of an order directing all moderators in the City of Dover (“the City”) to extend polling hours until 8 p.m. tonight (November 8, 2016). The New Hampshire State Republican Party has filed a Motion to Intervene and an Objection. For the following reasons, the Motion to Intervene is GRANTED, and the injunction is GRANTED.

The City set its polling hours as 8 a.m. to 7 p.m. At approximately 7:35 a.m. this morning, the City sent an email to its residents, at least 200 of whom opened the message, in which the City represented that the polling hours were actually 7 a.m. to **8 p.m.** The City subsequently sent two emails, one twenty minutes later and the other around noon, containing the correct polling hours. The second email, however, did not alert the recipient in its subject line that the information in the first email was incorrect; the reader had to scroll down to learn that the polls actually closed at 7 p.m., not 8 p.m. Likewise, the third email, which contained the 7 p.m. closing time in its subject line, did not indicate that the first email’s information was inaccurate. As a result, those who only opened the first email may remain under the impression that the polls close at 8 p.m.

Under New Hampshire law, an injunction is an “extraordinary remedy” that “should not issue unless there is an immediate danger of irreparable harm to the party seeking injunctive relief, and there is no adequate remedy at law.” *N.H. Dep’t of Envtl. Servs. v. Mottolo*, 155 N.H. 57, 63 (2007). A party seeking injunctive relief also must show that it is likely to succeed on the merits. *Id.* Courts consider the impact on the public interest and the possibility of substantial harm to others. *See UniFirst Corp. v. City of Nashua*, 130 N.H. 11, 13–14 (1987). The party seeking injunctive relief has the burden of persuading a court that it is entitled to such relief. *Kukene v. Genualdo*, 145 N.H. 1, 4 (2000).

Here, based upon the offers of proof, the Court finds that Plaintiff has demonstrated an immediate danger of irreparable harm – the potential disenfranchisement of a number of voters – and that there is a likelihood of success on the merits of its claim that the City is estopped from closing the polls at 7 p.m. – an hour earlier than its email indicated.

Intervenor cites a number of cases from jurisdictions that have reasoned that the remedy of keeping polls open for those standing in line is exclusive if there is irregularity. *Arkansas v. Kilgore*, 98 S.W.3d 798 (Ark. 2002); *State ex rel. Bush-Cheney 2000 v. Baker*, 34 S.W.3d 410 (Mo. Ct. App. 2000); *Southerland v. Fritz*, 955 F. Supp. 760 (E.D. Mich. 1996). That the New Hampshire statutory scheme is different is evidenced by RSA 659:26-a, which implicitly allows this Court to extend the hours of any polling place. Moreover, the Court is cognizant of the well-accepted “democracy canon,” which states that “[a]ll election statutes should be liberally interpreted in favor of the right to vote according to one's belief or free choice.” *Wilson v. Kennedy*, 86 N.E.2d

722, 726 (Ohio 1949). Finally, if the Court extends the hours under this statute, workers at the polling location(s) at issue are required to mark all ballots cast during the extended hours with the designation “EH.” This ensures that any reviewing entity will be able to distinguish between ballots cast during the extended hours should exclusion of those ballots be deemed appropriate. Accordingly, the Court finds that the balance of harms favors granting the injunction.

Therefore, Plaintiff’s motion for a preliminary injunction is GRANTED. The Court orders moderators in the City of Dover to extend polling hours in all locations therein until 8 p.m.

So Ordered.

__11/8/2016_6:48 PM_____
Date

/s/ Richard B. McNamara
Richard B. McNamara
Associate Justice