

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

LEAGUE OF WOMEN VOTERS OF THE)
UNITED STATES, LEAGUE OF WOMEN)
VOTERS OF ALABAMA, LEAGUE OF)
WOMEN VOTERS OF GEORGIA, LEAGUE)
OF WOMEN VOTERS OF KANSAS,)
GEORGIA STATE CONFERENCE OF THE)
NAACP, GEORGIA COALITION OF THE)
PEOPLE’S AGENDA, MARVIN BROWN,)
JOANN BROWN, and PROJECT VOTE,)

Plaintiffs,)

v.)

BRIAN D. NEWBY, in his capacity as the)
Executive Director of the United States Election)
Assistance Commission, and UNITED)
STATES ELECTION ASSISTANCE)
COMMISSION,)

Defendants,)

KANSAS SECRETARY OF STATE KRIS)
W. KOBACH and PUBLIC INTEREST)
LEGAL FOUNDATION,)

Defendant-Intervenors.)

FILED

FEB 23 2016

**Clerk, U.S. District and
Bankruptcy Courts**

Civil Case No. 16-236 (RJL)

MEMORANDUM ORDER
(February 23, 2016) [Dkt. #11]

Before the Court is plaintiffs’ Motion for a Temporary Restraining Order, on which the Court heard oral argument on February 22, 2016. Plaintiffs contend that Brian Newby, the Executive Director of the United States Election Assistance Commission (“EAC”), violated the Administrative Procedure Act, 5 U.S.C. §§ 500–596, 706, when he granted

requests from the states of Alabama, Georgia, and Kansas to amend their respective state-specific instructions on the national uniform mail-in voter registration form (the “Federal Form”) to require voter registration applicants to submit documentary proof of United States citizenship. Pls.’ Mem. 1 [Dkt. #11-1]. Plaintiffs ask this Court to issue a temporary restraining order enjoining defendants the EAC and Mr. Newby from enforcing his decisions and “to take all actions necessary to restore the status quo ante” Pls.’ Mot. 1–2 [Dkt. #11]. Upon consideration of the parties’ written submissions and oral arguments, the Court DENIES plaintiffs’ motion.

“The court may issue a temporary restraining order (‘TRO’) when a movant is faced with the possibility that irreparable injury will occur even before the hearing for a preliminary injunction required by Federal Rule of Civil Procedure 65(a) can be held.” *Shelley v. Am. Postal Workers Union*, 775 F. Supp. 2d 197, 202 (D.D.C. 2011) (citing Fed. R. Civ. P. 65(b)(1)). “The purpose of a TRO is to maintain the status quo of a case until the court has an opportunity to hear a request for fuller relief.” *Id.* A temporary restraining order is “an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief.” *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 21 (2008). The standard for issuance of this “extraordinary and drastic remedy . . . is very high and by now very well established.” *RCM Techs., Inc. v. Beacon Hill Staffing Grp., LLC*, 502 F. Supp. 2d 70, 72–73 (D.D.C. 2007) (internal citation omitted). The movant must demonstrate (1) a substantial likelihood of success on the merits of its claims; (2) that it will suffer irreparable harm if a TRO is not granted; (3) that the issuance of a TRO will

not unduly or substantially harm other parties; and (4) that the public interest favors issuance of a TRO. *Id.* at 73.

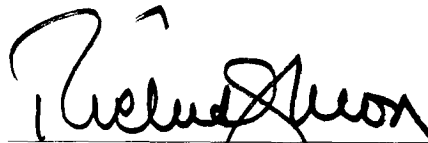
Given that the registration deadlines for the Alabama and Georgia primaries and for the Kansas Republican Caucus had already passed at the time this TRO motion was filed, Pls.’ Mem. 4, and that the effects of Mr. Newby’s actions on the ongoing registration process for the Kansas Democratic Caucus and plaintiffs’ rights and efforts thereto are uncertain at best, plaintiffs have *not* demonstrated they will suffer irreparable harm before the hearing on their Motion for a Preliminary Injunction, which will be held before this Court on March 9, 2016 at 2:30 PM. *See, e.g., United Farm Workers v. Chao*, 593 F. Supp. 2d 166, 171 (D.D.C. 2009) (where a movant alleges “speculative injuries,” the “‘high standard for irreparable injury’ sufficient to warrant the extraordinary relief of a TRO” has not been met and “the court need not reach the other factors relevant to the issue of injunctive relief”) (quoting *Chaplaincy of Full Gospel Churches v. England*, 454 F.3d 290, 297 (D.C. Cir. 2006)). This conclusion is bolstered by the fact that plaintiffs here seek not to maintain the status quo, but instead to restore the status quo ante, requiring this Court to proceed with the utmost caution. *See, e.g., Farris v. Rice*, 453 F. Supp. 2d 76, 78 (D.D.C. 2006) (“When a party seeks a mandatory injunction—to change the status quo through action rather than merely to preserve the status quo—typically the moving party must meet a higher standard than in the ordinary case: the movant must show ‘clearly’ that [it] is entitled to relief or that extreme or very serious damage will result.”). Finally, the Court is not yet convinced that plaintiffs have demonstrated a substantial likelihood of success on

the merits and looks forward to the benefit of full, adversarial briefing on the complex and important issues this case presents.¹

Accordingly, it is hereby

ORDERED that plaintiffs' Motion for a Temporary Restraining Order and Preliminary Injunction [Dkt. #11] is **DENIED IN PART** as it relates to plaintiffs' request for a Temporary Restraining Order.

SO ORDERED.

A handwritten signature in black ink, appearing to read "Richard J. Leon", written over a horizontal line.

RICHARD J. LEON
United States District Judge

¹ The Court provided defendants ample opportunity to submit a written opposition to plaintiffs' Motion for a Temporary Restraining Order and Preliminary Injunction. Min. Scheduling Order of Feb. 18, 2016. Defendants' counsel, the Department of Justice's Federal Programs Branch, took the time but upon the deadline submitted a short brief taking the extraordinary step of consenting to plaintiffs' request—not for TRO but for a *preliminary injunction*! Defs.' Response 1 [Dkt. #28]. Defendant-intervenors the Secretary of State of Kansas and the Public Interest Legal Foundation will submit their respective oppositions to plaintiffs' Motion on or before March 4, 2016.