

## Opinions for the week of October 5 - October 9, 2020

### **Lorraine Beeler v. Andrew M. Saul**

No.19-2099

Argued May 19, 2020 – Decided October 5, 2020

Case Type: Civil

Southern District of Indiana, Indianapolis Division. No.1:15-cv-01481 — **Sarah Evans Barker**, *Judge* Before EASTERBROOK, BRENNAN, and ST. EVE, *Circuit Judges*. ST. EVE, *Circuit Judge*, dissenting.

BRENNAN, *Circuit Judge*. The plaintiffs in this class action, dual citizens of the United States and Canada, receive monthly Canadian pension benefits. They also applied for and receive U.S. Social Security benefits. But those Social Security benefits were reduced under a statutory “windfall elimination provision” which decreases workers’ payments when they split their career between employment requiring payment of Social Security taxes (such as in the U.S.) and employment exempt from such taxes (such as in Canada). The plaintiffs challenge the reductions as unlawful, contending the provision does not apply to them. The district court upheld the application of the provision by the Social Security Administration (“the agency”) to plaintiffs and granted summary judgment to the agency. Correctly interpreted, the provision and related statutes apply to these plaintiffs and reduce their benefits, so we affirm.

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### **Indiana Vote by Mail, Inc. v. Paul Okeson**

No. 20-2605

Argued September 30, 2020 – Decided October 6, 2020

Case Type: Civil

Southern District of Indiana, Indianapolis Division. No. 20-cv-01271 — **James Patrick Hanlon**, *Judge*. Before RIPPLE, KANNE, and SCUDDER, *Circuit Judges*. RIPPLE, *Circuit Judge*, concurs

KANNE, *Circuit Judge*. Relying on the unprecedented challenges posed by the COVID-19 pandemic, Plaintiffs seek a preliminary injunction requiring Indiana to permit unlimited absentee voting in the upcoming general election. To attain this goal, they challenge Indiana's absentee-voting regime on two grounds. First, Plaintiffs assert that Indiana's extension of absentee ballots to elderly Hoosiers violates the Twenty-Sixth Amendment by abridging younger Hoosiers’ right to vote. Second, Plaintiffs contend that requiring some voters, such as themselves, to cast ballots in person during the ongoing COVID-19 pandemic infringes on their fundamental right to vote and thus violates the Fourteenth Amendment's Equal Protection Clause. These claims hinge on one question: what is “the right to vote”? In *McDonald v. Board of Election Commissioners of Chicago*, the Supreme Court told us that the fundamental right to vote does not extend to a claimed right to cast an absentee ballot by mail. 394 U.S. 802, 807 (1969). And unless a state's actions make it harder to cast a ballot at all, the right to vote is not at stake. *Id.* Considering that definition, Indiana's absentee-voting regime does not affect Plaintiffs’ right to vote and does not violate the Constitution. In the upcoming election, all Hoosiers, including Plaintiffs, can vote on election day, or during the early-voting period, at polling places all over Indiana. The court recognizes the difficulties that might accompany in-person voting during this time. But Indiana's absentee-voting laws are not to blame. It's the pandemic, not the State, that might affect Plaintiffs’ determination to cast a ballot. Two other principles guide our decision in this case. First, the Constitution explicitly grants states the authority to prescribe the manner of holding federal elections. U.S. Const. art. I, § 4. Recognizing that authority, our court has acknowledged that balancing the interests of discouraging fraud and mitigating elections-related issues with encouraging voter turnout is a judgment reserved to the legislature. See *Griffin v. Roupas*, 385 F.3d 1128, 1131 (7th Cir. 2004). Second, the Supreme Court's *Purcell* principle counsels federal courts to exercise caution and restraint before upending state election regulations on the eve of an election. See *Purcell v. Gonzalez*, 549 U.S. 1, 4 (2006). Given that voting is already underway in Indiana, we have crossed *Purcell's* warning threshold and are wary of turning the State in a new direction at this late stage. We therefore affirm the district court's decision denying Plaintiffs’ request for a preliminary injunction.

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**Alfred Bourgeois v. T.J. Watson**

No. 20 – 1891

Argued September 9, 2020 – Decided October 6, 2020

Case Type: Prisoner

Southern District of Indiana, Terre Haute Division. No. 2:19-cv-00392-JMS-DLP — **Jane Magnus-Stinson**, *Chief Judge*

Before KANNE, HAMILTON, and ST.EVE, *Circuit Judges*

ST.EVE, *Circuit Judge*. Alfred Bourgeois, a federal prisoner, was sentenced to death after he brutally abused and murdered his two-year-old daughter. Bourgeois now collaterally attacks his death sentence on the ground that he is intellectually disabled. Both the Federal Death Penalty Act (FDPA), 18 U.S.C. § 3596(c), and the Supreme Court's decision in *Atkins v. Virginia*, 536 U.S. 304, 122 S.Ct. 2242, 153 L.Ed.2d 335 (2002), forbid the execution of intellectually disabled offenders. But that is not the end of the matter. Bourgeois does not seek relief under 28 U.S.C. § 2255—the main statute authorizing postconviction relief for federal prisoners. Indeed, Bourgeois already has fully litigated an intellectual-disability claim under § 2255. Instead, Bourgeois brings a habeas corpus petition under 28 U.S.C. § 2241. To invoke that statute, however, Bourgeois must show that his case fits within a narrow exception known as the “savings clause.” See 28 U.S.C. § 2255(e). In the district court, Bourgeois accompanied his § 2241 petition with a motion to stay his execution—which the district court granted. In doing so, the court found that the government had waived its argument that Bourgeois could not channel his FDPA claim through the savings clause. We reverse that determination and further find that Bourgeois does not meet the stringent requirements for savings-clause eligibility. As a result, his § 2241 petition is procedurally barred. We vacate the stay with instructions for the district court to dismiss the petition.

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**Mary Nasello v. Theresa Eagleson**

No. 19-3215

Argued September 24, 2020 – Decided October 6, 2020

Case Type: Civil

Northern District of Illinois, Eastern Division. No. 18 C 7597 — **Robert W. Gettleman**, *Judge*.

Before EASTERBROOK, MANION, and KANNE, *Circuit Judges*.

EASTERBROOK, *Circuit Judge*. Plaintiffs have been classified as “medically needy” for the purpose of the Medicaid program. Most people eligible for Medicaid benefits are “categorically needy” because their income falls below a threshold of eligibility. People with higher income but steep medical expenses are “medically needy” once they spend enough of their own income and assets to qualify for the program's aid. 42 U.S.C. § 1396a(a)(10); *Winter v. Miller*, 676 F.2d 276, 277 (7th Cir. 1982) (discussing the nomenclature). The dispute at hand concerns how much these plaintiffs must spend—or, equivalently, how much of their current income and assets a state deems available for medical purposes. The higher those numbers, the less Medicaid pays. Plaintiffs contend that medical expenses they incurred before being classified as “medically needy” should be treated as money spent on medical care, whether or not those bills have been paid. Doing this would increase the state's payments for their ongoing care. But although Illinois deems all of the plaintiffs “medically needy” and eligible for public contributions toward their medical expenses, it does not treat plaintiffs’ past or outstanding bills as equivalent to their current medical outlays. They asked the district court to direct Illinois to pay more toward their care. But the judge dismissed the suit on the pleadings. 2019 U.S. Dist. LEXIS 174318 (N.D. Ill. Oct. 8, 2019).... The district judge resolved the claim that plaintiffs made. If they have more to say, they should have told us what it is. See, e.g., *Operating Engineers Pension Trust v. Kohl's Corp.*, 895 F.3d 933, 942 (7th Cir. 2018).

AFFIRMED

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**Jose Jimenez-Aguilar v. William Barr**

No. 19-1917

Argued July 31, 2020 – Decided October 6, 2020

Case Type: Agency  
Order of the Board of Immigration Appeals No. A206-156-831  
Before EASTERBROOK, and ROVNER, *Circuit Judges*

PER CURIAM. Jose Alfredo Jimenez-Aguilar is a citizen of Honduras. In 2003, when he was 14 years old, he entered the United States by stealth (“without inspection”) and has remained. Today he is married and has two children. But he has never received permission to be in this country, and he came to the attention of immigration officials in 2014 after he was arrested for domestic assault. Placed in removal proceedings, Jimenez-Aguilar sought cancellation of removal on the ground that his return to Honduras would cause “exceptional and extremely unusual hardship” to his spouse and children, all of whom are citizens of the United States. See 8 U.S.C. § 1229b(b)(1)(D). Several years passed while he sought modification of two criminal convictions that made such relief unavailable. After one conviction was vacated and the other reduced in grade, and he was found eligible, an immigration judge denied his request on the merits. The IJ found that Jimenez-Aguilar had not shown a potential for “exceptional and extremely unusual hardship.” That decision is not subject to judicial review, see 8 U.S.C. § 1252(a)(2)(B)(i); *Mireles v. Gonzales*, 433 F.3d 965, 968 (7th Cir. 2006), and we do not discuss it further. On administrative appeal, the Board of Immigration Appeals rejected Jimenez-Aguilar’s contention that his counsel rendered ineffective assistance by discouraging him from making a claim for asylum. The Board also rejected his argument that the IJ should have notified him that asylum or withholding were potential benefits. ... The petition for review is granted and the proceeding is remanded for a new removal hearing. Other issues that might arise at such a hearing—such as whether Jimenez-Aguilar is disqualified from relief by his long delay in applying, see 8 U.S.C. § 1158(a)(2)(B)—must be considered by the IJ and the Board before they are ripe for judicial review.

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**Wisconsin State Legislature v. Marge Bostelmann**

Nos. 20-2835 & 20-2844

Argued September 15, 2020 – Decided October 8, 2020

Case Type: Civil

Western District of Wisconsin. Nos. 20-cv-249-wmc, et al. — **William M. Conley**, *Judge*.

Before EASTERBROOK, ROVNER, and ST.EVE, *Circuit Judges*.

ROVNER, *Circuit Judge*, dissenting.

PER CURIAM. On September 29, 2020, we issued an order denying the motions for a stay in these appeals, because we concluded that Wisconsin’s legislative branch has not been authorized to represent the state’s interest in defending its statutes. On October 2, in response to a request for reconsideration, we certified to the Supreme Court of Wisconsin the question “whether, under Wis. Stat. § 803.09(2m), the State Legislature has the authority to represent the State of Wisconsin’s interest in the validity of state laws.” That court accepted the certification and replied that the State Legislature indeed has that authority. *Democratic National Committee v. Bostelmann*, 2020 WI 80, — N.W.2d — (Oct. 6, 2020). In light of that conclusion, we grant the petition for reconsideration and now address the Legislature’s motion on the merits. (The other intervenors have not sought reconsideration.) As we explained last week, a district judge held that many provisions in the state’s elections code may be used during the SARS-CoV-2 pandemic but that some deadlines must be extended, additional online options must be added, and two smaller changes made. — Wis.2d —, — N.W.2d —, 2020 WL 5627186, 2020 U.S. Dist. LEXIS 172330 (W.D. Wis. Sept. 21, 2020). In particular, the court extended the deadline for online and mail-in registration from October 14 (see Wis. Stat. § 6.28(1)) to October 21, 2020; enjoined for one week (October 22 to October 29) enforcement of the requirement that the clerk mail all ballots, but only for those voters who timely requested an absentee ballot but did not receive one, and authorized online delivery during this time; and extended the deadline for the receipt of mailed ballots from November 3 (Election Day) to November 9, provided that the ballots are postmarked on or before November 3. Two other provisions of the injunction (— Wis.2d —, — N.W.2d —, 2020 WL 5627186 at \*—, 2020 U.S. Dist. LEXIS 172330 at \*98) need not be described. The State Legislature offers two principal arguments in support of a stay: first, that a federal court should not change the rules so close to an election; second, that political rather than judicial officials are entitled to decide when a pandemic justifies changes to rules that are otherwise valid. See *Luft v. Evers*, 963 F.3d 665 (7th Cir.

2020) (sustaining Wisconsin's rules after reviewing the elections code as a whole). We agree with both of those arguments, which means that a stay is appropriate under the factors discussed in *Nken v. Holder*, 556 U.S. 418, 434, 129 S.Ct. 1749, 173 L.Ed.2d 550 (2009)...The injunction issued by the district court is stayed pending final disposition of these appeals.

[Full Text](#)

**Joseph Degroot v. Client Services, Incorporated**

No. 20-1089

Argued September 15, 2020 – Decided October 8, 2020

Case Type: Civil

Eastern District of Wisconsin. No. 1:19-cv-00951 — **William C. Griesbach**, *Judge*

Before FLAUM, ROVNER, and WOOD, Circuit Judges.

FLAUM, *Circuit Judge*. Plaintiff-appellant Joseph Degroot brought this putative class action suit in the Eastern District of Wisconsin against defendant-appellee Client Services, Inc. (“CSI”), alleging violations of the Fair Debt Collection Practices Act (“FDCPA”), 15 U.S.C. § 1692. The district court granted the collection agency's motion to dismiss, holding that CSI's communications were not false, misleading, or deceptive to the unsophisticated consumer. We agree and affirm.

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