



Third Circuit Clarifies Standard for Assessing Preliminary Injunctions

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Authors:

[Andrew J. Marino](#)

On July 15, the Third Circuit issued a precedential opinion in [Delaware State Sportsmen's Association v. Delaware Department of Safety & Homeland Security](#) that has the potential to alter the standard district courts apply when evaluating motions for preliminary injunctions. In a lawsuit challenging Delaware's ban on assault weapons and extended magazines, the court held that the group challenging the law had not met the requirements for issuing a preliminary injunction, emphasizing that injunctions "were and still are extraordinary relief" reserved for "exceptional cases." It noted that injunctions, often "granted hurriedly and on the basis of very limited evidence," themselves can inflict harm. And it concluded that "[a]ffidavits drafted by lawyers are poor substitutes for discovery, live testimony, and cross-examination." Finally, the Third Circuit highlighted that "forecasting the merits [of a lawsuit] risks prejudging them," as preliminary relief can "freez[e] first impressions in place."

With these principles in mind, the court reiterated that preliminary injunctions "should be granted only in limited circumstances" – to preserve the parties' relative positions until a trial on the merits can be held, thereby ensuring that the court "can still grant an adequate remedy" or "render a meaningful judgment." The court contrasted this purpose with issuing a preliminary injunction "just to prevent harm," which is not an injunction's "paramount purpose," and so the threat of irreparable harm "does not automatically trigger a preliminary injunction." If a harm threatens to moot a case – by destroying disputed property or bankrupting a party – a preliminary injunction could be warranted to ensure a trial can be held. But "[m]uch more often," the court concluded, "even nonpecuniary injury does not rise to that level." The court thus held that district courts may properly withhold a preliminary injunction "if a plaintiff's alleged injury does not threaten to moot the case," describing this as "perhaps usually[] the wiser course."

Courts, however, must still apply the traditional four-factor test when exercising their discretion whether to issue a preliminary injunction: (1) the likelihood of success on the merits; (2) the risk of irreparable injury absent preliminary relief; (3) the balance of the equities; and (4) the public interest, with the first two factors being the most critical. *Winter v. NRDC*, 555 U.S. 7, 2 (2008); *Nken v. Holder*, 556 U.S. 418, 434 (2009). But the Third Circuit rejected the approach of other courts of appeals, like the Ninth Circuit, which has held that when a party shows a likelihood of success, it “almost always” shows irreparable harm. The Third Circuit held that collapsing the traditional four-factor test into one likelihood-of-success inquiry is improper, and thus parties should be sure to thoroughly brief the other three “piece[s] of the puzzle” and keep in mind the district court’s ultimate goal of “balanc[ing] the risks of mootness against the perils of injunctions.”

The court also engaged in a fairly strict review of the evidence that the plaintiffs had mustered in favor of their claim of irreparable harm. That evidence consisted of “only four declarations” that failed to show that the status quo was likely to change. And the plaintiffs’ “generalized claim of harm” was “hardly enough” to call for an “extraordinary and drastic remedy.” The court underscored that “the challengers offered no evidence that without a preliminary injunction, the District Court will be unable to decide the case or give them meaningful relief.”

Finally, the Third Circuit held that the third and fourth *Winter* factors – harm to the opposing party and the public interest, which merge when the Government is the opposing party – counseled against a preliminary injunction here on grounds that they posed a threat both to federalism, with a federal court enjoining a state’s laws, and to the separation of powers, with a court enjoining democratically enacted statutes.

The key takeaway? Parties seeking preliminary injunctions in New Jersey, Pennsylvania, or Delaware federal courts should be prepared to address the Third Circuit’s decision in *Delaware State Sportsmen’s Association*. Parties should fulsomely brief all four *Winter* factors and not simply rest on a showing of likelihood of success on the merits. They should include declarations and

evidence sufficient to show that an “injunction is required to preserve the status quo.” And they should be prepared to explain why a failure to issue a preliminary injunction would hinder a district court’s ability to oversee the case to its conclusion.

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