

United States District Court
District of Kansas

Robert Dool, Julie Brown, Donald D. Rosenow, and Thomas C. Schermuly,

Plaintiffs,

v.

Anne E. Burke, in her official capacity as Chairman of the Kansas Supreme Court Nominating Commission; **Kerry E. McQueen, Patricia E. Riley, Matthew D. Keenan,** and **Jay F. Fowler**, in their official capacities as Attorney Members of the Kansas Supreme Court Nominating Commission; **Carol Gilliam Green**, in her official capacity as Clerk of the Kansas Supreme Court,

Defendants.

Case No. _____

**ORAL ARGUMENT REQUESTED;
INJUNCTIVE RELIEF SOUGHT**

Plaintiffs’ Motion for Temporary Restraining Order and Preliminary Injunction

Pursuant to Federal Rule of Civil Procedure 65, Plaintiffs Robert Dool, Julie Brown, Donald D. Rosenow, and Thomas C. Schermuly respectfully move this Court to temporarily restrain the enforcement and execution of Kansas Constitution article III, sections 5(a) and (e) and Kansas Statutes sections 20-119 to 20-123 and 20-132. In support of this motion, Plaintiffs state as follows:

1. Plaintiffs have filed their Verified Complaint requesting declaratory and injunctive relief. In their complaint, Plaintiffs request this Court declare Kan. Const. art. III, § 5(e) and Kan. Stat. §§ 20-119 to -123 unconstitutional facially and as applied to Plaintiffs in violation of the Equal Protection Clause of the Fourteenth Amendment.

2. In the Tenth Circuit, motions for temporary restraining orders and motions for preliminary injunctions are governed by the same standard. Thus, Plaintiffs' are filing for a temporary restraining order and a preliminary injunction together.

3. Plaintiffs are entitled to a temporary restraining order if they can show that they are likely to succeed on the merits, they will suffer irreparable injury if the injunction is not granted, they have shown that the balance of potential hardships favors the Plaintiffs, and that the grant of a temporary restraining order is in the public interest.

4. As discussed in the accompanying memorandum, Plaintiffs have shown a likelihood of success on the merits by demonstrating that Kan. Const. art. III, § 5(e) and Kan. Stat. §§ 20-119 to -123 are unconstitutional facially and as applied to Plaintiffs because they deny Plaintiffs the right to vote for public officials and denies them the right to full participation in the selection of their state judges.

5. As discussed in the accompanying memorandum, Plaintiffs have shown that they will suffer irreparable harm on the basis that the denial of equal protection under the law is an irreparable harm.

6. As discussed in the accompanying memorandum, Plaintiffs have also shown that the balance of harms tips in their favor because the State cannot be harmed by an injunction forbidding it to deny citizens the equal protection of the laws.

7. As discussed in the accompanying memorandum, Plaintiffs have shown that a temporary restraining order would serve the public interest by ensuring equal participation in the selection of the Kansas judiciary, specifically in the filling of the current Kansas Supreme Court vacancy, in accordance with the Equal Protection Clause.

8. The vacancy on the Kansas Supreme Court was created on August 4, 2010. By law, the Kansas Supreme Court Nominating Commission is to vote for nominees and submit the names to the Governor within 60 days.

9. Plaintiffs' counsel has contacted the Kansas Attorney General by telephone to give notice of the filing of this motion and the verified complaint.

WHEREFORE, Plaintiffs pray this court to grant a temporary restraining order against the enforcement the aforementioned statutes in selecting a successor to the current Kansas Supreme Court vacancy.

Dated: August 25, 2010

Respectfully submitted,

s/ James Bopp, Jr.

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