United States District Court
Southern District of Iowa
Central Division

Steven Carlson, **Mary Granzow**, **Richard Kettells**, and **William Ramsey**, *Plaintiffs*, *v.* **Justice Mark Cady**, in his official capacity as Chairman of the State Judicial Nominating Commission; **Jean Dickson**, **Steven J. Pace**, **Beth Walker**, **Amy J. Skogerson**, **Joseph L. Fitzgibbons**, **Guy R. Cook**, and **H. Daniel Holm, Jr.**, in their official capacities as Elective Members of the State Judicial Nominating Commission; **Margaret G. Redenbaugh**, **Coleen A. Denefe**, **Mary Beth Lawler**, **Madalin A. Williams**, **David C. Cochran**, **Steven Brody**, and **Timothy L. Mikkelsen**, in their official capacities as Appointive Members of the State Judicial Nominating Commission; and **David K. Boyd**, in his official capacity as State Court Administrator, *Defendants*.	**Case No. _____** **Brief Supporting Motion for Temporary Restraining Order/Preliminary Injunction** **Oral Argument Requested**

Plaintiffs' Brief in Support of Motion for Temporary Restraining Order and Preliminary Injunction

This case presents a challenge to the Iowa Constitution, Article V, Section 16, and to Iowa Code Sections 46.2, 46.4, 46.5, 46.7, 46.8, 46.9, 46.9A, 46.10, and 46.14, which establish the system by which candidates are nominated to fill vacancies in the Iowa Supreme Court and Court of Appeals. In their verified complaint, Plaintiffs pray that the Court declare parts of these provisions facially unconstitutional and enjoin their enforcement, because they violate the Equal Protection Clause of the Fourteenth Amendment of the United States by denying Iowa citizens

their right to vote and to participate in the selection of public officials. In the alternative, Plaintiffs pray that the Court declare the above provisions unconstitutional as applied to them.

Statement of the Facts

In Iowa, the State Judicial Nominating Commission ("Commission") is empowered to select the nominees for vacancies on the Iowa Supreme Court and Court of Appeals. Iowa Const. art. V, § 15; Iowa Code §§ 46.12 to 46.15. Currently the Commission has fifteen members. Seven members are appointed by the Governor subject to confirmation by the senate. Seven are elected by the resident members of the bar of the state. And the Chief Justice of the Iowa Supreme Court serves as a member and chairman of the Commission. Elections for Elective Members take place in January. Iowa Code § 46.2. These elections are administered by the State Court Administrator, including the maintenance of the list of eligible electors, the taking of nominations to be placed on the ballot, and conduct of the actual election and certification of results. Iowa Code §§ 46.5, 46.8, 46.9, 46.9A, 46.10. Only bar members may participate in these elections. Iowa Const. art. V, § 16; Iowa Code § 46.7.

On November 2, 2010, Chief Justice Marsha Ternus, Justice David Baker, and Justice Michael Streit stood for retention and failed to receive enough votes to be retained on the Iowa Supreme Court. These results were certified on November 29, 2010. Accordingly, their current terms will expire on January 1, 2011, at which time there will be three vacancies on the Iowa Supreme Court. The State Judicial Nominating Commission must begin the process of selecting nominees to fill these impending vacancies within ten days of the certification of the results of the retention election. The Commission is required to consider individuals available for the positions and submit three nominees per vacancy to the Governor within sixty days of the

certification. This means the Commission must convene by December 9, 2010, and submit nominations to the Governor no later than January 28, 2010.

Upon receiving the nominations, the Governor has thirty days to make a selection to fill the vacancy from among the nominees determined by the Nominating Commission. Iowa Const. art. V, § 15. If the Governor fails to make an appointment within thirty days, the current Chief Justice of the Iowa Supreme Court will do so. Iowa Const. art. V, § 15; Iowa Code § 46.15.2.

Plaintiffs are qualified Iowa voters, residing in counties across the state. They are excluded from participating in the elections of the attorney members of the Nominating Commission because they are not members of the Iowa bar.

Argument

The standard for temporary restraining orders and preliminary injunctions in the Eighth Circuit is set out in *Dataphase Systems, Inc. v. C L Systems, Inc.*, 640 F.2d 109 (8th Cir. 1981). *See S.B. McLaughlin & Co. v. Tudor Oaks Condo. Project*, 877 F.2d 707, 708 (8th Cir.1989) (indicating *Dataphase* applies to temporary restraining orders). A court must consider "(1) the threat of irreparable harm to the movant; (2) the state of the balance between this harm and the injury that granting the injunction will inflict on other parties litigant; (3) the probability that movant will succeed on the merits; and (4) the public interest." *Dataphase*, 640 F.2d at 113. No single factor is determinative, and "[t]he equitable nature of the proceeding mandates that the court's approach be flexible enough to encompass the particular circumstances of each case." *Id.* For the reasons that follow, Plaintiffs are likely to succeed on the merits.

I. Plaintiffs Are Likely to Succeed on the Merits.

A. Franchise Restrictions Are Subject to Strict Scrutiny Absent Narrow Exceptions.

The Fourteenth Amendment to the United States Constitution provides: "No State shall make or enforce any law which shall . . . deny any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV, § 1. A state government may not make arbitrary and invidious distinctions among its citizens. *Avery v. Midland County*, 390 U.S. 474, 484 (1968). This is especially true with respect to the fundamental right to vote. *See, e.g.*, *Reynolds v. Sims*, 377 U.S. 533, 554 (1964). Accordingly, the Equal Protection Clause guarantees qualified citizens the "right to vote in elections without having [their] vote wrongfully denied, debased or diluted." *Hadley v. Junior College Dist. of Metro. Kansas City*, 397 U.S. 50, 52 (1970).

In a republic, all government power is derived from the people as a whole. The Federalist No. 39, at 209 (James Madison) (Clinton Rossiter ed., 1999). This is the essence of self-government in a republic. "It is *essential* to such a government that it be derived from the great body of the society, and not from an inconsiderable proportion or a favored class of it . . . . It is *sufficient* for such a government that the persons administering it be appointed, either directly or indirectly, by the people." *Id.* In a government by the people, public officials cannot be selected by an exclusive group, but must be selected by the people as a whole.

The right to self-governance underlies the Supreme Court's jurisprudence regarding what the Equal Protection Clause of the Fourteenth Amendment requires in the selection of public officials. The right to vote, for example, derives from this right to self-governance. *Kramer v. Union Free Sch. Dist. No. 15*, 395 U.S. 621, 626 (1969). "Any unjustified discrimination in

determining who may participate . . . in the selection of public officials undermines the legitimacy of representative government." *Id.* Having a specific class of people exclusively vote for certain public officials is contrary to this right.

For this reason, the Supreme Court has held that "any classification restricting the franchise on grounds other than residence, age, and citizenship cannot stand unless the district or State can demonstrate that the classification serves a compelling state interest." *Hill v. Stone*, 421 U.S. 289, 297 (1975); *see also Harper v. Va. State Bd. of Elections*, 383 U.S. 663, 670 (1966) ("Classifications which might invade or restrain [the right to vote] must be closely scrutinized and carefully confined."); *Kramer*, 395 U.S. at 626 ("No less rigid an examination is applicable to statutes denying the franchise to citizens who are otherwise qualified by residence and age."); *Cipriano*, 395 U.S. at 704; *see also Kramer*, 395 U.S. at 1890 ("[W]hen we are reviewing statutes which deny some residents the right to vote, the general presumption of constitutionality afforded state statutes and the traditional approval given state classifications if the Court can conceive of a 'rational basis' for the distinctions made are not applicable.") When presented with an election in which "some resident citizens are permitted to participate and some are not," a court will generally apply strict scrutiny under the Equal Protection Clause to determine whether the discrimination among voters is justified. *Kramer*, 395 U.S. at 629.

In particular, franchise restrictions involving occupation are inherently suspect. See *Carrington v. Rash*, 380 U.S. 89, 96 (1965) (stating that "there is no indication in the Constitution that occupation affords a permissible basis for distinguishing between qualified voters within the state."). Thus, the restriction on voting for the elected members of the Commission to bar members is subject to strict scrutiny.

B. Restricting Commission Member Elections to Bar Members Fails Strict Scrutiny.

To pass strict scrutiny, the Commission's franchise restriction must be narrowly tailored to a compelling government interest. The State must show that those who retain the franchise are "specially interested" in the outcome of the election, such that "all those excluded are in fact substantially less interested or affected than those the statute includes." *Cipriano v. City of Houma*, 395 U.S. 701, 704 (1969). The disproportionate interest between those who retain the franchise and those excluded must be "sufficiently substantial to justify excluding the latter from the franchise." *City of Phoenix v. Kolodziejski*, 399 U.S. 204, 209 (1970). This will only be the case if those excluded are not substantially interested in and significantly affected by the government powers exercised by the government body. *Cipriano*, 395 U.S. at 704. Otherwise, the restriction is not narrowly tailored to meet the compelling government interest.

In *Kramer*, the Supreme Court struck down a New York law that permitted only landowners (or lessees) and parents of school children to vote in school district elections. *Kramer*, 395 U.S. at 623. New York had argued that it had a legitimate interest in "restricting a voice in school matters to those 'directly affected' by such decisions." *Id.* at 631. The plaintiff-appellant, a resident of the school district, did not own property or have children enrolled in school and was therefore ineligible to vote in school district elections. The Supreme Court held that the law failed strict scrutiny because, even assuming the State's asserted interest were valid, the law was "not sufficiently tailored to limiting the franchise to those 'primarily interested' in school affairs to justify the denial of the franchise to [plaintiff-appellant] and members of his

class." *Id.* at 633. In short, because all residents were affected by the outcome of the election, all residents were entitled to vote.

Likewise, *Hellebust v. Brownback*, 42 F.3d 1331 (10th Cir. 1994) involved a Kansas system in which members of the Board of Agriculture where selected by a group of delegates from agricultural organizations. 42 F.3d at 1332-33. The plaintiffs in that case alleged that this selection scheme violated the Equal Protection Clause because the Board "exercised broad authority affecting arguably all Kansans and is not limited solely to agriculture or agribusiness interests." *Id.* at 1332. The State had argued that the laws administered by the Board all related to agriculture, so that it was appropriate to limit the selection of the members of the Board to the groups primarily affected by those laws. *Id.* at 1334. Nevertheless, the Tenth Circuit struck down the arrangement. Even though the vast majority of the Board's powers only affected agricultural organizations, the court held that "once a state agency has the authority to affect every resident in matters arising in their daily lives, its powers are not disproportionate to those who vote for its officials." *Id.* at 1335.

Iowa's system for selecting its judges suffers from the same fundamental defects as the laws at issue in *Kramer* and *Hellebust*. All Iowans have a substantial interest in and are significantly affected by the nomination of the state judiciary. As the Supreme Court has stated, "state court judges possess the power to 'make' common law . . . [and] have immense power to shape the States' constitutions as well." *Republican Party of Minnesota v. White*, 536 U.S. 765, 784 (2002). The nomination of judges do not merely, or even predominantly, affect only Iowa attorneys, but all Iowans. The Iowa supreme court, for example, has the authority to interpret the Iowa constitution and statutes, to which all Iowans are subject. *See, e.g.*, *Varnum v. Brien*, 763

N.W.2d 862, 875-76 (Iowa 2009). The supreme court is also the ultimate arbiter of the rights and duties of all Iowans under the constitution and statutes of the State. *See, e.g.*, *id*.

Despite this important role served by the Commission, only bar members are permitted to vote for the seven elected members. Thus, just as in *Kramer* and *Hellebust*, the class excluded from voting (non-attorneys) are not "substantially less interested or affected than those the statute includes." *Cipriano*, 395 U.S. at 704. "Such unequal application of fundamental rights [is] repugnant to the basic concept of representative government." *Little Thunder*, 518 F.2d at 1258. Because the primary role of the Commission is to decide who becomes a justice or judge in Iowa, all qualified Iowa citizens have a substantial interest in and are materially affected by who is on that Commission. As such, the restriction fails strict scrutiny.

C. The Commission is Not a Limited Purpose Entity.

An exception to the *Kramer* rule is made for entities that do not perform traditional government functions, and whose functions are narrow in effect. For example, *Salyer Land Co. v. Tulare Lake Basin Water Storage District*, 410 U.S. 719 (1973), upheld a law permitting only landowners to vote for the board of a water district because (a) the district's sole purpose was to acquire, store, and distribute water for farming in the district; (b) it provided no "general public" services; and (c) the district's "actions disproportionately affect[ed] landowners" as all of the costs for the district's projects were assessed against them. 410 U.S. at 728-29. Similarly, *Ball v. James*, 451 U.S. 355 (1981), upheld an Arizona law that limited the right to vote in board elections for a power district to only landowners, weighted each vote in proportion to the amount of land owned by the eligible voter. 451 U.S. at 355-56. The Court held that the district was "essentially [a] business enterprise[], created by and chiefly benefitting a specific group of

landowners," rather than a body whose actions effected the general population. *Id.* at 368. Where an entity is found to be a limited purpose entity, as in *Salyer* and *Ball*, the franchise restriction is not subject to strict scrutiny, but will be upheld if it is reasonably related to the limited nature of the outcome of the election. *Salyer*, 410 U.S. at 730-31; *Ball*, 451 U.S. at 365 n.8.

Nominating judges is a normal function of government and, as such, the Commission exercises traditional government authority. *See Richardson v. Koshiba*, 693 F.2d 911, 914 (9th Cir. 1982); *but see African-American Voting Rights Legal Defense Fund, Inc. v. Missouri*, 994 F. Supp. 1105, 1128 (E.D. Mo. 1997) (asserting without argument that "the election of lawyers to [judicial nominating] commissions is not an election of general interest.") The power to nominate is not a private power and has never been exercised by a private entity in any of the governments of the United States. Unlike the water boards in *Salyer* and *Ball*, which provided services often provided by private entities, the nomination of government officials is inherently a traditional element of government sovereignty. *Ball*, 451 U.S. at 368. Unlike the water districts at issue in *Salyer* and *Ball*, the Commission does not have a merely "nominal public character." *Id.* at 368. The water districts were pre-existing private business entities co-opted by the government for the purpose of simplifying revenue. *Id.* at 369. In sharp contrast, the Commission is an entity established by the Iowa constitution as part of the structure of the government to determine who the highest officers of a branch of government will be. Even if attorneys were more interested and affected, everyone else must be "in fact *substantially less* interested or affected." *Kramer*, 395 U.S. at 632. While the members of the Iowa bar may have *different* interests in who the justices and judges are in Iowa, this interest is not substantially *greater* than the interest of all Iowans. *See Kolodziejski*, 399 U.S. at 212.

A district court in Kansas recently upheld a similar nominating commission against constitutional challenge by concluding that it was a limited purpose entity. *Dool v. Burke*, 2010 WL 4568993 (D. Kan. Nov. 3, 2010). In *Dool*, the court held that Kansas' judicial nominating commission was a limited purpose entity because "the Commission has but one function: to screen applicants to fill vacancies on the Kansas Supreme Court and Court of Appeals." *Dool*, 2010 WL 4568993 at *2. *See also* Stephen J. Ware, *Selection to the Kansas Supreme Court*, 17 Kan. J.L. & Pub. Pol'y 386 (2008); Stephen J. Ware, *The Bar's Extraordinarily Powerful Role In Selecting the Kansas Supreme Court*, 18 Kan. J.L. & Pub. Pol'y 392 (2009).

This, however, misstates the Court's analysis in *Salyer*. Whether an entity is a limited purpose entity turns not whether it performs a limited number of functions, but rather on whether the functions it does perform affect only a limited portion of the populace as opposed to affecting the populace generally. The electoral college, for example, performs only one limited function: electing the president. Yet that function affects every citizen. As the Tenth Circuit noted in *Hellebust*, "once a state agency has the authority to affect every resident in matters arising in their daily lives, its powers are not disproportionate to those who vote for its officials." *Hellebust*, 42 F.3d at 1335. Because the actions of the Commission affect all Iowans, *Salyer* does not apply.

D. *Wells v. Edwards* Does Not Bar Plaintiffs' Claims Because the Commission Exercises An Executive, Not A Judicial, Function.

In *Wells v. Edwards*, 409 U.S. 1095 (1973), the Supreme Court summarily affirmed a district court decision holding that when a state holds elections for judges, it does not need to ensure that "equal numbers of voters can vote for proportionately equal numbers of [judges]."

The holding means that the Equal Protection Clause does not require judicial electoral district to be of equal population. 347 F. Supp. 453, 455 (M.D. La. 1972), *summarily aff'd*, 409 U.S. 1095 (1973) (*quoting Hadley*, 397 U.S. at 56).

Wells, however, is inapposite because the Commission exercises a traditional executive, rather than a judicial, function. *See* Joshua Ney, *Does the Kansas Supreme Court Selection Process Violate the One Person, One Vote Doctrine?*, 49 Washburn L.J. 143 (2009). Therefore, the *Wells* decision lends no support for the notion that the election of Commission members is somehow immune from the commands of the Equal Protection Clause.

In any event, the Supreme Court's summary affirmation of *Wells* does not mean that all applications of the Equal Protection Clause have no relevance to the selection of the judiciary. Rather, it simply means that malapportionment in judicial election districts is not a violation of the Fourteenth Amendment. It does not follow that the other guarantees of the Equal Protection Clause, such as the "principles of *Kramer*," *Hill*, 421 U.S. at 297, are irrelevant to the selection of a state's judiciary.

Wells does not mean that a state may establish qualifications other than residency, age, and citizenship for participation in judicial elections on rational basis alone. If this were otherwise, it would lead to the absurd result that a state could exclude citizens from judicial elections based upon occupation, impose a poll tax, or any other factor they deem reasonable.

Thus, Supreme Court precedent has only declared that geographic population apportionment is not mandated in judicial elections by the Equal Protection Clause. *See Republican Party of North Carolina v. Martin*, 980 F.2d 943, 952-54 (4th Cir. 1992); *Voter Information Project, Inc. v. City of Baton Rouge*, 612 F.2d 208, 211-12 (5th Cir. 1980). The

Supreme Court has given no indication that voter qualification statutes should not be subject to strict scrutiny because the election is judicial. The reasoning in *Wells* is explicitly limited to the concept of apportionment with respect to judicial elections: "The primary purpose of one-man, one-vote apportionment is to make sure that each official member of an elected body speaks for approximately the same number of constituents." *Wells*, 347 F. Supp. at 455.

The Ninth Circuit recently upheld Alaska's judicial selection system against constitutional challenge. *Kirk v. Carpeneti*, 623 F.3d 889 (9th Cir. 2010). The court in *Kirk* held that *Kramer* did not apply to judicial nominating commissions because such commissions were neither executive nor legislative offices. *Id.* at 16656. But this is incorrect and inconsistent with Ninth Circuit precedent. As that circuit held previously, judicial nominating commissions perform a traditional executive function, and are not functionally part of the judicial branch of government. *Richardson v. Koshiba*, 693 F.2d 911, 914 (9th Cir. 1982); *see also McMillan v. Svetanoff*, 793 F.2d 149, 153-54 (7th Cir. 1986). As such, neither Wells nor *Kirk* stand as a bar to Plaintiffs' claims here.

B. *Sailors*

Finally, the Supreme Court has held that Equal Protection is not implicated where an office is appointive rather than elective. *Sailors v. Bd. of Educ. of Kent County*, 387 U.S. 105, 111 (1967), which upheld a similar judicial nominating system in Indiana, is likewise in error. In *Bradley v. Work*, 916 F. Supp. 1446 (S.D. Ind. 1996), a federal district court upheld a judicial nominating commission, some of whose members were elected by the bar, on the grounds that Equal Protection scrutiny was not implicated because the state had decided not to make use of a "popular election." *Bradley*, 916 F. Supp. at 1456. According to *Bradley*, Equal Protection was

not implicated because "Indiana decided not to select members of the Commission by popular election. A popular election is one in which all registered voters meeting the age and residency requirements may vote." *Id.* This argument, however, proves too much. If the fact that voting is restricted means that an election is not "popular" and hence is not protected by Equal Protection, then the Supreme Court's repeated claims that "any classification restricting the franchise on grounds other than residence, age, and citizenship cannot stand unless the district or State can demonstrate that the classification serves a compelling state interest" becomes meaningless. *Hill*, 421 U.S. at 297.

Kramer and subsequent Supreme Court precedents contradict this conclusion. The Supreme Court in *Kramer* found that "close scrutiny" is required particularly when an election is not opened to all otherwise qualified voters:

> Therefore, if a challenged state statute grants the right to vote to some bona fide residents of requisite age and citizenship and denies the franchise to others, the Court must determine whether the exclusions are necessary to promote a compelling state interest.

Kramer, 395 U.S. at 626-27 (citations omitted). The court in *Bradley* agreed with the defendants in that case that the commission members "are not selected by popular election and about the nature of the Commission." *Bradley*, 916 F. Supp. at 1456. But it is the nature of the elected entity that determines whether a popular election is required.

Contrary to *Bradley*, an election does not become one of "special interest" *because* the state is excluding citizens from participating. Rather, *if* the state is excluding citizens from voting in an election, it must either show that the exclusion is necessary to serve a compelling interest or that the election is one of "special interest" such that it need not be open to all qualified voters.

E.g. Hill, 421 U.S. at 297. Here, the Iowa judicial nominating system excludes otherwise qualified citizens from voting in an election for the members of the Nominating Commission based upon occupation. *Gray v. Sanders*, 372 U.S. 368, 380 (1963). The State must show that this system survives strict or close scrutiny. It is precisely the State's decision not to hold a popular election that must be scrutinized.

Similarly, in *Kirk* the Ninth Circuit held that Equal Protection was not implicated because the Commission members were not elected, but were appointed by the bar association's Board of Governors. *Kirk*, 623 F.3d at 898. Even assuming that this reasoning is correct, however, it does not apply here. As in Iowa, state judges in Alaska are nominated by a judicial commission. The specifics of the Alaska system, however differ from the Iowa system in key respects. In Alaska, justices and judges must be appointed by the governor from two or more nominees forwarded by the Alaska Judicial Council ("Council"). Alaska Const. art. IV, § 5; Alaska Stat. § 22.05.080(a). The Council is composed of seven members. Alaska Const. art. IV, § 8. One is the current chief justice of the Alaska supreme court, who sits ex officio. *Id.* Three members, who must be non-attorneys, are appointed by the governor subject to confirmation by the legislature in joint session. *Id.* And the final three members must be attorneys and are appointed by the Board of Governors of the Alaska Bar Association ("Board of Governors") without any legislative confirmation or approval. *Id.*; Alaska Stat. § 08.08.020. In Iowa, by contrast, seven members the Nominating Commission are elected by the resident members of the Iowa bar within each congressional district, as they existed in 1965. Thus, unlike in Kirk, there clearly is an election for seven of the Commission members (who, in fact, are called the "elected members" in the statute). *Kramer* therefore applies.

II. Plaintiffs Have Demonstrated Irreparable Harm.

If the judicial selection system is not enjoined, Plaintiffs will be irreparably harmed because they will have been excluded from equal participation in the selection of the next three Iowa Supreme Court justices. This denial of their rights under the Equal Protection Clause cannot be undone. If the elections for the Elective Members of the Commission are not enjoined from taking place, Plaintiffs will be irreparably harmed because the State will be holding an election in that Plaintiffs are excluded from participating in based on their occupation.

III. The Balance of Harms Tips Decidedly in Favor of Plaintiffs.

A preliminary injunction will not harm Defendants because they have no legitimate interest in continuing to exercise government power in an official capacity when they have not been given that power consistent with the United States Constitution. The State also has no interest in administering an election subject to an unconstitutional voter qualification.

IV. An Injunction Is in the Public Interest.

Enjoining the participation of the unconstitutionally selected Commission members will benefit the public interest because all citizens will no longer be excluded from full participation in the selection of their judiciary. An injunction will ensure that the current vacancies on the Iowa Supreme Court are filled through the equal participation of all citizens in a constitutional manner.

Plaintiffs do not challenge the constitutionality of merit selection systems for choosing judges. Accordingly, they do not challenge the constitutionality of requiring a certain number of Commission members to be attorneys. The unconstitutional element is that citizens are excluded from the election of some Commission members based upon occupation. Because Commission

members perform a traditional government function that affects all citizens in Iowa, this exclusion must be subject to strict scrutiny.

Enjoining any further election of the Elective Members is also in the public interest because the rights of non-attorney voters will no longer be violated through disenfranchisement.

There are many ways in which Iowa's judicial selection system could be changed to conform with the commands of Equal Protection. Thirty-three states currently use forms of merit selection in the appointment of judges, and the majority do not give attorneys an exclusive and unconfirmed vote in the selection of nominating commission members. *See*, *Symposium: Mulling Over the Missouri Plan: A Review of State Judicial Selection and Retention Systems*, 74 Mo. L. Rev. Issue 3 (2009) (featuring several articles discussing merit selection systems across the country). Plaintiffs are not asking this Court to reform the system or suggest an alternative system, whether appointive or elective. Rather, they simply ask the Court to end the violation of their Equal Protection rights.

Dated: December 8, 2010

Respectfully submitted,

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