

**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. Deneffe, 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. _____

Expedited Consideration and Oral Argument Requested

Plaintiffs' Motion for Temporary Restraining Order and Preliminary Injunction

Pursuant to Federal Rule of Civil Procedure 65, Plaintiffs Steven Carlson, Mary Granzow, Richard Kettells, and William Ramsey respectfully move this Court to enjoin the enforcement and execution of 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. 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 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 unconstitutional facially and as applied to Plaintiffs in violation of the Equal Protection Clause of the Fourteenth Amendment.

2. In the Eighth 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 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 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 Iowa judiciary, specifically in the filling of the current Iowa Supreme Court vacancies, in accordance with the Equal Protection Clause.

8. The vacancies on the Iowa Supreme Court will open on January 1, 2011, as a result of the certification of the retention election results on November 29, 2010. By law, the State Judicial Nominating Commission is to vote for nominees and submit the names to the Governor within 60 days.

9. Plaintiffs' counsel has contacted the Iowa Attorney General and the Secretary of the State Judicial Nominating Commission by telephone to give notice of the filing of this motion and the verified complaint.

This motion is made on the grounds specified in this motion, Plaintiffs' brief in support thereof, Plaintiffs' Verified Complaint, and such other and further evidence as may be presented to the Court at the time of the hearing. Plaintiff requests oral argument on this motion.

December 8, 2010

Respectfully submitted,

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