

**United States District Court
District of Minnesota**

<p>Minnesota Citizens Concerned For Life, Inc. et al.,</p> <p style="text-align: center;"><i>Plaintiffs,</i></p> <p style="text-align: center;">v.</p> <p>Lori Swanson et al.,</p> <p style="text-align: center;"><i>Defendants.</i></p>	<p style="text-align: center;">Civ. No. 10-CV-2938 DWF/JSM</p>
--	---

Motion for Injunctive Relief Pending Appeal

Pursuant to Federal Rule of Appellate Procedure 8(a)(1), Minnesota Citizens Concerned for Life, Inc., The Taxpayers League of Minnesota, and Coastal Travel Enterprises, LLC, the Plaintiffs in the above named case, hereby respectfully request that this Court enjoin the enforcement of Minn. Stat. §§ 10A.12(1), 10A.12(1a), and 211B.15(3) (“the corporate IE ban”); § 10A.01(18), as authoritatively interpreted by the Minnesota Campaign Finance and Public Disclosure Board (“the IE definition”); and §§ 10A.27(13), 211B.15(2), 211B.15(4) (“the corporate contribution ban”) pending resolution of the Plaintiffs’ appeal to the Eighth Circuit Court of Appeals. In support of this Motion, the Plaintiffs state as follows:

1. On July 7, 2010, the Plaintiffs filed a Verified Complaint challenging the constitutionality of the corporate IE ban, the IE definition, and the corporate contribution

ban.¹ (Doc. 1.) The Plaintiffs also simultaneously filed a Motion for Preliminary Injunction requesting that the challenged provisions be enjoined during the pendency of this action, (Doc. 8.), and a Motion to Consolidate the preliminary injunction hearing and the merits hearing, (Doc. 5).

2. On September 20, 2010, this Court entered an order denying the Plaintiffs' Motion to Consolidate as well as their Motion for Preliminary Injunction. (Doc. 59.)

3. On September 22, 2010, the Plaintiffs filed a Notice of Appeal of the September 20th Order.

4. Rule 8(a)(1) of the Federal Rules of Appellate Procedure provides that "a party must ordinarily move first in the District court for . . . (C) an order . . . granting an injunction while an appeal is pending."

5. The standard for granting an injunction pending appeal is the same as for granting a preliminary injunction. The moving party must show that: (1) the applicant has made a strong showing that he is likely to succeed on the merits; (2) the applicant will be irreparably injured absent an injunction; (3) the issuance of the injunction will not substantially injure the other parties interested in the proceeding; and (4) an injunction is in the public interest. *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987).

6. The Plaintiffs meet all four elements needed for injunctive relief. In *Citizens United v. FEC*, 130 S. Ct. 876 (2101), the Supreme Court held that corporations have a

¹The Plaintiffs also challenged the constitutionality of two other provisions of Minnesota law, but subsequently abandoned those challenges. (Doc. 51 at 1 n.2.)

First Amendment right to make general fund IEs and cannot be required to employ a separate, segregated fund to make IEs, as the corporate IE ban does. So, the Plaintiffs are likely to prevail on the merits of their challenge to the corporate IE ban. *Citizens* also held that because PACs cannot speak for corporations, corporations must be allowed to engage in their own First Amendment activity, yet the corporate contribution ban does not allow corporations to do that, but requires them to make contributions through PACs. So, the Plaintiffs are likely to prevail on the merits of their challenge to the corporate contribution ban. *Buckley v. Valeo*, 424 U.S. 1 (1976), meanwhile, held that independent expenditures are only those communications that contain express words of advocacy, yet the IE definition defines independent expenditure more broadly than that. So the Plaintiffs are likely to prevail on their challenge to the IE definition. The Plaintiffs' speech and association is burdened and chilled by these challenged laws. "The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Elrod v. Burns*, 427 U.S. 347, 373 (1976). So Plaintiffs will suffer irreparable harm absent an injunction. The harms to First Amendment rights from not granting an injunction outweigh whatever harms may occur if it is granted. And, because the public interest is supported by protecting First Amendment rights, all the elements for injunctive relief are present.

7. The Plaintiffs recognize that, based on this Court's ruling on September 20th, this Court may continue to believe that the Plaintiffs are unlikely to succeed on the merits such that it cannot grant the Plaintiffs the requested relief. If so, this Court should

promptly dispose of the instant motion, so as to allow the Plaintiffs to fully pursue the matter in the Court of Appeals.

WHEREFORE, the Plaintiffs respectfully move this Court to grant their Motion for Injunction Pending Appeal.

September 22, 2010

Respectfully Submitted,

James R. Magnuson (Minn. Bar #389084)
magnuson@mklaw.com
MOHRMAN & KAARDAL, P.A.
33 South Sixth Street #4100
Minneapolis, MN 55402
Telephone: (612) 341-1074
Facsimile: (612) 341-1076
Local Counsel for Plaintiffs

/s/ Joe La Rue
James Bopp, Jr., Ind. Bar #2838-84*
jboppjr@aol.com
Richard E. Coleson, Ind. Bar #11527-70*
rcoleson@bopplaw.com
Joe La Rue, Ohio Bar #80643*
jlarue@bopplaw.com
Kaylan L. Phillips, Okla. Bar #22219*
kphillips@bopplaw.com
BOPP, COLESON & BOSTROM
1 South 6th Street
Terre Haute, Indiana 47807
Telephone: (812) 232-2434
Facsimile: (812) 235-3685
Lead Counsel for Plaintiffs
*Pro hac vice applications granted July
8, 2010 by order of Magistrate Judge
Janie S. Mayeron

Certificate of Service

I, Joe La Rue, am an attorney with the law firm Bopp, Coleson & Bostrom. Our business address is 1 South Sixth Street, Terre Haute, Indiana 47807. I am not a party to the above-titled action. I represent the Plaintiffs in it.

I hereby certify that on September 22, 2010, I electronically filed the foregoing document described as **Plaintiff's Motion for Injunctive Relief Pending Appeal** with the Clerk of Court using the CM/ECF system which will send notification of such filing to:

Alan I. Gilbert
al.gilbert@state.mn.us
Counsel for State Defendants

Daniel P Rogan
daniel.rogan@co.hennepin.mn.us
Counsel for Hennepin County Defendant

I declare under the penalty of perjury under the laws of the State of Indiana that the above is true and correct. Executed this 22 day of September, 2010.

s/ Joe La Rue
Joe La Rue, Ohio State Bar No. 80643
Attorney for the Plaintiffs
Email: jlarue@bopplaw.com