

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

THOMAS W. GEORGE, JOHN P.
ROEHRICK, and CARLTON G. SALMONS,

Plaintiffs,

vs.

MICHAEL A. MAURO, in his Official
Capacity as State Commissioner of Elections,
and MARSHA TERNUS, MICHAEL J.
STREIT, and DAVID L. BAKER,
in their Official Capacities as
Justices of the Iowa Supreme Court

Defendants.

EQUITY NO.: C26733

FILED
POLK COUNTY, IA.
10 DEC 13 PM 2:37
CLERK DISTRICT COURT

**PETITION FOR
DECLARATORY JUDGMENT
AND PERMANENT INJUNCTION**

COME NOW the Plaintiffs, Thomas W. George, John P. Roehrick, and Carlton G. Salmons, pursuant to Iowa R. Civ. P. 1.1101 et. seq. and 1.1501 et. seq., and, for their Petition, state:

1. Plaintiffs, and all of them, are citizens of the State of Iowa, residents of Polk County, Iowa, and attorneys in good standing licensed to practice law in the State of Iowa, all of whom have taken the oath to support the Constitution of the State of Iowa. As such, Plaintiffs are also taxpayers of, and to, the State of Iowa, Polk County, Iowa, and the cities of their residence within Polk County, Iowa. All of Plaintiffs are qualified voters who all participated by voting in the mid-term election that occurred on November 2, 2010. Plaintiffs are injured in fact by having cast ballots at such election that were void and illegal in violation of the Iowa Constitution.

2. Defendant, Michael A. Mauro, is the Iowa Secretary of State, and, by virtue of Iowa Code Section 47.1, is designated the State Commissioner of Elections who is responsible for, inter alia, prescribing statewide uniform election practices and procedures, the necessary forms required

for the conduct of elections, including the form of ballot, under Iowa Code Section 49.53, and the Notice to inform voters of the location on a ballot for retaining or removing judicial officers.

3. Defendants, Marsha Ternus, Michael J. Streit, and David L. Baker, are Justices of the Iowa Supreme Court, and, on November 2, 2010, at the General Election, stood for Judicial Election.

4. Iowa Constitution, Article V, Section 17, the 1962 Constitutional Amendment, provides:

“Members of all courts shall have such tenure in office as may be fixed by law, but terms of supreme court judges shall be not less than eight years and terms of district court judges shall be not less than six years. Judges shall serve for one year after appointment and until the first day of January following the next judicial election after the expiration of such year. They shall at such judicial election stand for retention in office on a separate ballot which shall submit the question of whether such judge shall be retained in office for the tenure prescribed for such office and when such tenure is a term of years, on their request, they shall, at the judicial election next before the end of each term, stand again for retention on such ballot. Present supreme court and district court judges, at the expiration of their respective terms, may be retained in office in like manner for the tenure prescribed for such office. The general assembly shall prescribe the time for holding judicial elections.

(emphasis added).

5. That Iowa Constitution, Article V, Section 17, is self-executing, except as to the last sentence thereof which delegates to the General Assembly the duty to prescribe the time for such judicial elections, which is now codified by Iowa Code Section 46.17 (1966, 2009), specifying that judicial elections shall be held at the time of the general election.

6. That immediately following the passage of the 1962 Constitutional Amendment, Article V, Section 17, the General Assembly implemented the “separate ballot” requirements, as codified in the 1966 Code of Iowa, Sections 46.21, 46.22, and 46.23, by requiring a “separate ballot” in conformity to Iowa Constitution, Article V, Section 17. A true and accurate copy of Iowa Code Sections 46.21, 46.22, and 46.23 of the 1966 Code of Iowa is attached hereto as Exhibit A.

7. Notwithstanding Iowa Constitution, Article V, Section 17, and the limited duty thereby conveyed to the General Assembly, the Iowa Legislature has enacted other laws since 1966, both consistent with the Iowa Constitution, Article V, Section 17, and inconsistent with it, beyond the limited power conveyed to determine only the time when judicial elections shall be held.

8. By Iowa Code Section 46.21, the Legislature has provided that the names of all judges shall be placed on one ballot. By Iowa Code Section 46.22, if optical scan ballots are used, the judicial ballot may be by separate ballot or may be by a distinct heading used to distinguish the judicial ballot from other candidates and measures to be voted upon. By Iowa Code Section 49.30, the names of all candidates, including judicial candidates, are to be printed on one optical scan ballot unless it is not possible to do so, then they may be provided by a separate ballot; except that where conventional paper ballots are used, separate ballots shall be used for judicial elections. By Iowa Code Section 49.37(1)(c), judicial elections are arranged on the general ballot separated by distinct lines on the ballot from other offices and issues.

9. Attached hereto, and marked Exhibit B, is a true and accurate copy of the optical scan ballot used in the general election of November 2, 2010 in a Polk County, Iowa precinct. The judicial election of three Iowa Supreme Court judges, Marsha Ternus, Michael J. Streit, and David L. Baker, appears on this single unified optical scan ballot, combined with other elections, non-partisan offices, Constitutional questions, and public measures.

10. Upon information and belief, Defendant Mauro created Exhibit B by following some of the Iowa Code provisions, above cited, by which the Iowa Legislature has ostensibly authorized the merger on a single optical scan ballot of judicial elections with other elections and other measures, notwithstanding Iowa Constitution, Article V, Section 17, which only conveys the

legislative power to set the time for judicial elections, but otherwise, in clear, unambiguous and mandatory terms, requires that judicial elections shall be by separate ballot.

11. Upon information and belief, at the November 2, 2010 general election, the above-referenced three Defendant Iowa Supreme Court judges were voted not retained.

12. The use of optical scan ballots, Exhibit B, combining on a single ballot all elections, including judicial elections, issues, and measures, is in facial violation of Iowa Constitution, Article V, Section 17, notwithstanding the purported statutes, above cited, which allow such contrary to the requirements of the Constitution.

13. All of Iowa's 1873 voting precincts now use optical scan ballots, as opposed to paper ballots, such that judicial elections are also combined with other elections and measures in like fashion as shown on Exhibit B.

14. The general election of November 2, 2010 where three Iowa Supreme Court judges were voted not retained on any ballot like Exhibit B was illegal and void as in violation of Iowa Constitution, Article V, Section 17, and the vacation of office by such three Judges on December 31, 2010 is illegal as a result.

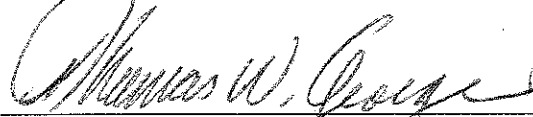
15. This Court should enter a declaratory judgment that Exhibit B and all optical scan ballots used throughout the State of Iowa at the November 2, 2010 general election in which such ballots combined judicial elections, concerning the three Iowa Supreme Court judges, with other elections, issues, and public measures, and all votes cast thereunder, in which the above-referenced three Iowa Supreme Court judges were not retained are void and of no force and effect as in violation of Iowa Constitution, Article V, Section 17, and it should issue a temporary and permanent injunction against the vacation of offices by the above-referenced Defendant Iowa Supreme Court judges pending either the next regular judicial election at which such judges would stand or a special

election called and using Constitutionally required separate ballots by which the people of the State of Iowa may lawfully cast their votes for or against retention of Defendant Judges.

WHEREFORE, the Plaintiffs, Thomas W. George, John P. Roehrick, and Carlton G. Salmons, pray that this Court enter a temporary injunction restraining and prohibiting the Defendant Justices from vacating their positions as Justices of the Iowa Supreme Court on and after December 31, 2010; that this Court enter a Declaratory Judgment that the Judicial Election ballot used in the November 2, 2010 general election was illegal as in violation of Article V, Section 17, of the Iowa Constitution; and that the temporary injunction granted be made permanent upon declaratory judgment that such three Iowa Supreme Court Justices shall serve until the next regular election of such Judges occurs in accordance with Iowa Constitution, Article V, Section 17, or, alternatively, until a Special Election is called to determine retention of such Judges, using lawful ballots so prescribed by Iowa Constitution, Article V, Section 17.

Respectfully submitted,

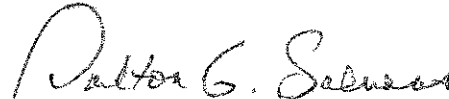
GAUDINEER, COMITO & GEORGE, L.L.P.



Thomas W. George AT0002735



John P. Roehrick AT0006733



Carlton G. Salmons AT0006950
3737 Westown Parkway, Ste. 2D
West Des Moines, IA 50266
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Original filed.

VOLUME I

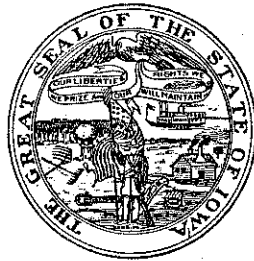
CODE OF IOWA

1966

CONTAINING

ALL STATUTES OF A GENERAL
AND PERMANENT NATURE

To and including the Acts of a permanent nature
of the Sixty-first General Assembly, 1965

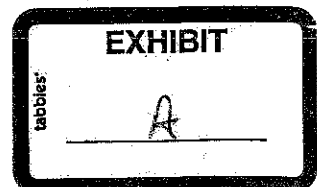


CHARLES W. BARLOW
CODE EDITOR

WAYNE A. FAUPEL
DEPUTY CODE EDITOR

PUBLISHED BY THE STATE OF IOWA UNDER AUTHORITY OF CHAPTER 14 HEREOF

1966



§46.14, NOMINATION AND ELECTION OF JUDGES

tice the proper number of nominees, in alphabetical order. Such nominees shall be chosen by the affirmative vote of a majority of the full statutory number of commissioners upon the basis of their qualifications and without regard to political affiliation. Nominees shall be members of the bar of Iowa, shall be residents of the state or district of the court to which they are nominated, and shall be of such age that they will be able to serve an initial and one regular term of office to which they are nominated before reaching the age of seventy-two years. No person shall be eligible for nomination by a commission as judge during the term for which he was elected or appointed to that commission. Absence of a commissioner or vacancy upon the commission shall not invalidate a nomination. The chairman of the commission shall promptly certify the names of the nominees, in alphabetical order, to the governor and the chief justice. [60 GA, ch 80,§14; 61GA, ch 92,§7]

46.15 Appointments to be from nominees. All appointments to the supreme court and district court shall be made from the nominees of the respective judicial nominating commissions. [60GA, ch 80,§15]

46.16 Terms of judges. Subject to the provisions of sections 605.24 and 605.25 and to removal for cause:

1. The initial term of office of judges of the supreme court and district court shall be for one year after appointment and until January 1 following the next judicial election after expiration of such year; and

2. The regular term of office of judges of the supreme court retained at a judicial election shall be eight years, and of judges of the district court so retained shall be six years, from the expiration of their initial or previous regular term as the case may be. [60GA, ch 80, §16; 61GA, ch 92,§8(1, 2)]

Terms of supreme court judges, elected in 1960, end Dec. 31, 1966 [60GA, ch 80,§16]

Terms of other supreme court judges and of district court judges, in office on ratification the 1962 judicial constitutional amendment, end June 30, 1965

Terms of other supreme and district judges, in office June 30, 1963, end Dec. 31, 1964

46.17 Time of judicial election. Judicial elections shall be held at the time of the general election. [60GA, ch 80,§17]

46.18 Eligibility of voters. Electors entitled to vote at the general election shall be entitled to vote at the judicial election. All voting procedures provided by chapter 53 for absent voting by armed forces in general elections shall be applicable to judicial elections. [60GA, ch 80,§18]

46.19 Pollbooks. The pollbooks used for the general election shall also constitute the pollbooks for the judicial election. [60GA, ch 80,§19]

46.20 Declaration of candidacy. At least ninety days prior to the judicial election...

ceding expiration of his initial or regular term of office, a judge of the supreme court or district court may file a declaration of candidacy with the secretary of state, whereupon such judge shall stand for retention or rejection at that election. If a judge fails to file such declaration, his office shall be vacant at the end of his term. [60GA, ch 80,§20]

46.21 Conduct of election. At least fifty-five days prior to each judicial election, the secretary of state shall certify to the county auditor of each county a list of the judges of the supreme court and district court to be voted on in such county at that election. The auditor shall place the names upon the ballot in the order in which they appear in the certificate unless only one county is voting thereon. The secretary of state shall rotate the names in the certificate by county, or the auditor shall rotate them upon the ballot by precinct if only one county is voting thereon. The names of all judges to be voted on shall be placed upon one ballot, which shall be in substantially the following form:

STATE OF IOWA
JUDICIAL BALLOT

(Date)

VOTE ON ALL NAMES BY PLACING AN X IN THE APPROPRIATE BOX AFTER EACH NAME.

SUPREME COURT

Shall the following judges of the Supreme Court be retained in office?

JOHN DOE YES NO
RICHARD ROE YES NO

DISTRICT COURT

Shall the following judge of the District Court be retained in office?

JOHN SMITH YES NO
[60GA, ch 80,§21]

Voting mark generally, see §49.92

46.22 Voting. Voting at judicial elections shall be by separate paper ballot or by voting machine in the space provided for public measures. If paper ballots are used the election judges shall offer a ballot to each voter. Separate ballot boxes for the general election ballots and the judicial election ballots shall not be required. The general election ballot and the judicial election ballot may be voted in the same voting booth. [60GA, ch 80,§22]

46.23 General election and absent voter laws. So far as applicable general election and absent voter laws shall apply to judicial elections. An application for an absent voter ballot for a general election shall also constitute an application for an absent voter ballot for a judicial election to be held at the same time, and the ballots shall be mailed or delivered to the voter together. The sealed envelope transmitted by the absent voter to the auditor containing the absent voter general election ballot may also contain the judicial election ballot.

initial or regular term supreme court or dis- laration of candidacy ate, whereupon such ention or rejection at fails to file such dec- be vacant at the end 0,\$20]

on. At least fifty-five al election, the secre- to the county auditor he judges of the su- court to be voted on lection. The auditor on the ballot in the ar in the certificate, voting thereon. The ate the names in the the auditor shall ro- by precinct if only eon. The names of shall be placed upon in substantially the

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PLACING AN X IN THE
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ES NO
ES NO

CURT
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ES NO

t judicial elections ballot or by voting led for public meas- used the election o each voter. Sep- eneral election bal- n ballots shall not election ballot and ay be voted in the ch 80,\$22]

and absent voter eneral election and dy to judicial elec- n absent voter bal- all also constitute voter ballot for a at the same time, led or delivered to led envelope trans- to the auditor eneral election bal- dicial election bal-

46.24 Results of election. A judge of the supreme court or district court must receive more affirmative than negative votes to be retained in office. When the poll is closed, the election judges shall publicly canvass the vote forthwith. The board of supervisors shall canvass the returns at its meeting on Monday after the election, and shall promptly certify the number of affirmative and negative votes on each judge to the secretary of state.

The state board of canvassers shall, at the time of canvassing the vote cast at a general election, open and canvass all of the returns for the judicial election. Each judge of the supreme court or district court who has received more affirmative than negative votes shall receive from the state board of canvassers an appropriate certificate so stating. [60GA, ch 80,\$24]

Constitutionality, 60GA, ch 80,\$28

CHAPTER 47

REGISTRATION OF VOTERS

Referred to in §§48.20, 53.33. Permanent registration, ch 48

- 47.1 Registration required.
- 47.2 Registers.
- 47.3 Vacancies.
- 47.4 Consolidation of precincts.
- 47.5 Books and supplies.
- 47.6 Effect of consolidation.
- 47.7 Qualifications.
- 47.8 Oath of registers.
- 47.9 Term and compensation.
- 47.10 Notice.
- 47.11 Time of publication.
- 47.12 Form of registry books.
- 47.13 Expenses.
- 47.14 Public inspection.
- 47.15 Place of meeting of registers.
- 47.16 Time of meeting of registers.
- 47.17 Duration of meetings.
- 47.18 Right of registration.
- 47.19 Oath.
- 47.20 Questions propounded to applicant.
- 47.21 Completing registration.
- 47.22 Keeping registry book.
- 47.23 Alphabetical list.

- 47.24 Posting.
- 47.25 Correction.
- 47.26 Certifying and copying.
- 47.27 Division.
- 47.28 Use of lists at election.
- 47.29 Return of alphabetical lists.
- 47.30 Corrections of lists.
- 47.31 Sick voters.
- 47.32 Registration on election day.
- 47.33 Certificates granted on election day.
- 47.34 Wrongful striking from list.
- 47.35 Certificates delivered to judges.
- 47.36 Registers to certify duplicate registra- tions.
- 47.37 Striking off names.
- 47.38 New registry—how often.
- 47.39 Registration book in nonpresidential years.
- 47.40 Transfer constitutes registration.
- 47.41 Clerk or auditor to furnish registration records.
- 47.42 Clerk or auditor to preserve records.
- 47.43 Penalty.

47.1 Registration required. Registration of voters shall be made for all elections, in all cities having a population of ten thousand or more, not counting inmates of any state institution. Provided, however, that by city ordinance, registration of voters may be required in any city having a population of not less than four thousand and not more than ten thousand. Provided, however, that the county board of supervisors by proper action may require registration of voters in any township having a population of 1,500 or more.

Registration of voters shall not be made for school elections except as otherwise provided. [C73,\$599; C97,\$§1076, 1078, 1131; S13,\$1076-a; SS15,\$1076; C24, 27, 31, 35, 39,\$676; C46, 50, 54, 58, 62,\$47.1]

47.1. Amended.
Ch. 1037, §10—2nd 63 GA

Mandatory provisions for permanent registration, see §48.1
Registration in school districts, §§277.16-277.18, 277.33, 277.34

47.2 Registers. The city council or board of supervisors shall, for each precinct in the city or such township in the county and on or before the sixth Monday preceding each general election, appoint one suitable person from each

of the two political parties which cast the greatest number of votes at the last general election, from three names presented by each chairman of the city central political committee of such parties, to be registers of voters. [C73,\$599; C97,\$1076; SS15,\$1076; C24, 27, 31, 35, 39,\$677; C46, 50, 54, 58, 62,\$47.2]

47.3 Vacancies. If for any cause any register shall not be appointed at or before the time above mentioned, or, if appointed, shall be unable for any cause to serve, the mayor of such city or chairman of the board of supervisors of such county shall forthwith, on similar recommendation, make such appointments and fill all vacancies. [C97,\$1076; SS15,\$1076; C24, 27, 31, 35, 39,\$678; C46, 50, 54, 58, 62,\$47.3]

47.4 Consolidation of precincts. All cities or counties in which registration is required may, by resolution passed not less than thirty days or more than sixty days preceding any general, city, or special election, consolidate the voting precincts of the city or county into registration districts for the purpose of regis-

OFFICIAL BALLOT GENERAL ELECTION

A DELAWARE 2 COUNTRY B NOVEMBER 2, 2010 C POLK COUNTY, IOWA

VOTING INSTRUCTIONS

To vote for individual candidates on this ballot, darken the oval before your choice like this: . To vote for a candidate not on this ballot, write the candidate's name on the line provided and darken the oval before your choice like this: . Judges, Constitutional Questions, and a Public Measure are located on the back of this ballot. To retain a Judge, approve a Question or Public Measure on this ballot, darken the oval before the word "YES" like this: . For a negative vote for a Judge, Question or Public Measure on this ballot, darken the oval before the word "NO" like this: .

STRAIGHT PARTY	SECRETARY OF STATE VOTE FOR NO MORE THAN ONE	COUNTY TREASURER VOTE FOR NO MORE THAN ONE
If you wish to vote a straight party ticket, darken the oval before your one party of choice, like this: <input checked="" type="radio"/> . Marking a straight party vote does not include votes for nonpartisan offices, judges or questions. VOTE FOR NO MORE THAN ONE	<input type="radio"/> Michael A. Mauro <small>Democratic Party</small>	<input type="radio"/> Mary Maloney <small>Democratic Party</small>
	<input type="radio"/> Matt Schultz <small>Republican Party</small>	<input type="radio"/> Mike R. Adams <small>Republican Party</small>
	<input type="radio"/> Jake Porter <small>Libertarian Party</small>	<input type="radio"/> Write-in
	<input type="radio"/> Write-in	COUNTY RECORDER VOTE FOR NO MORE THAN ONE
<input type="radio"/> Democratic Party	AUDITOR OF STATE VOTE FOR NO MORE THAN ONE	<input type="radio"/> Julie M. Haggerty <small>Democratic Party</small>
<input type="radio"/> Republican Party	<input type="radio"/> Jon Murphy <small>Democratic Party</small>	<input type="radio"/> Eric J. Zingler <small>Republican Party</small>
<input type="radio"/> Libertarian Party	<input type="radio"/> David A. Vaudt <small>Republican Party</small>	<input type="radio"/> Write-in
<input type="radio"/> Socialist Workers Party	<input type="radio"/> Write-in	COUNTY ATTORNEY VOTE FOR NO MORE THAN ONE
UNITED STATES SENATOR VOTE FOR NO MORE THAN ONE	TREASURER OF STATE VOTE FOR NO MORE THAN ONE	<input type="radio"/> John P. Sarcone <small>Democratic Party</small>
<input type="radio"/> Roxanne Conlin <small>Democratic Party</small>	<input type="radio"/> Michael L. Fitzgerald <small>Democratic Party</small>	<input type="radio"/> Write-in
<input type="radio"/> Chuck Grassley <small>Republican Party</small>	<input type="radio"/> David D. Jamison <small>Republican Party</small>	NONPARTISAN OFFICES
<input type="radio"/> John Heiderscheit <small>Libertarian Party</small>	<input type="radio"/> Write-in	TOWNSHIP TRUSTEE DELAWARE TOWNSHIP VOTE FOR NO MORE THAN ONE
<input type="radio"/> Write-in	SECRETARY OF AGRICULTURE VOTE FOR NO MORE THAN ONE	<input type="radio"/> Tim Overton
UNITED STATES REPRESENTATIVE DISTRICT 3 VOTE FOR NO MORE THAN ONE	<input type="radio"/> Francis Thicke <small>Democratic Party</small>	<input type="radio"/> Rochell L. Comer
<input type="radio"/> Leonard L. Boswell <small>Democratic Party</small>	<input type="radio"/> Bill Northey <small>Republican Party</small>	<input type="radio"/> Richard W. Groves
<input type="radio"/> Brad Zaun <small>Republican Party</small>	<input type="radio"/> Write-in	<input type="radio"/> Write-in
<input type="radio"/> Rebecca Williamson <small>Socialist Workers Party</small>	ATTORNEY GENERAL VOTE FOR NO MORE THAN ONE	TOWNSHIP TRUSTEE TO FILL VACANCY DELAWARE TOWNSHIP VOTE FOR NO MORE THAN ONE
<input type="radio"/> Write-in	<input type="radio"/> Tom Miller <small>Democratic Party</small>	<input type="radio"/> Sherry Lee Hornbacher
GOVERNOR AND LT. GOVERNOR VOTE FOR NO MORE THAN ONE TEAM	<input type="radio"/> Brenna Findley <small>Republican Party</small>	<input type="radio"/> Larry L. Haley, Sr.
<input type="radio"/> Chet Culver Patty Judge <small>Democratic Party</small>	<input type="radio"/> Write-in	<input type="radio"/> Write-in
<input type="radio"/> Terry E. Branstad Kim Reynolds <small>Republican Party</small>	STATE SENATOR DISTRICT 21 VOTE FOR NO MORE THAN ONE	TOWNSHIP CLERK DELAWARE TOWNSHIP VOTE FOR NO MORE THAN ONE
<input type="radio"/> Jonathan Narcisse Richard Martar <small>Iowa Party</small>	<input type="radio"/> Dennis H. Black <small>Democratic Party</small>	<input type="radio"/> Stacey Foster
<input type="radio"/> Eric Cooper Nick Weltha <small>Libertarian Party</small>	<input type="radio"/> Joe Pirillo <small>Republican Party</small>	<input type="radio"/> Kim Overton
<input type="radio"/> David Rosenfeld Helen Meyers <small>Socialist Workers Party</small>	<input type="radio"/> Write-in	<input type="radio"/> Write-in
<input type="radio"/> Gregory James Hughes Robin Prior-Calef <small>Nominated by Petition</small>	STATE REPRESENTATIVE DISTRICT 42 VOTE FOR NO MORE THAN ONE	COUNTY PUBLIC HOSPITAL TRUSTEE VOTE FOR NO MORE THAN THREE
<input type="radio"/> Write-in	<input type="radio"/> Geri D. Huser <small>Democratic Party</small>	<input type="radio"/> Max Knauer
<small>Governor</small>	<input type="radio"/> Kim Pearson <small>Republican Party</small>	<input type="radio"/> Charles R. Montgomery
<small>Li. Governor</small>	<input type="radio"/> Dan Nieland <small>Nominated by Petition</small>	<input type="radio"/> Mary Krieg
<input type="radio"/> Write-in	COUNTY BOARD OF SUPERVISORS DISTRICT 3 VOTE FOR NO MORE THAN ONE	<input type="radio"/> Jean Logan
<input type="radio"/> Write-in	<input type="radio"/> Tom Hockensmith <small>Democratic Party</small>	<input type="radio"/> Janet Metcalf
<input type="radio"/> Write-in	<input type="radio"/> Dave Funk <small>Republican Party</small>	<input type="radio"/> Write-in
<input type="radio"/> Write-in	<input type="radio"/> Write-in	<input type="radio"/> Write-in

Precinct Election Official

Polk County Auditor and
Commissioner of Elections

STYLE # 452C

0129-01-01

TURN THE BALLOT OVER

EXHIBIT

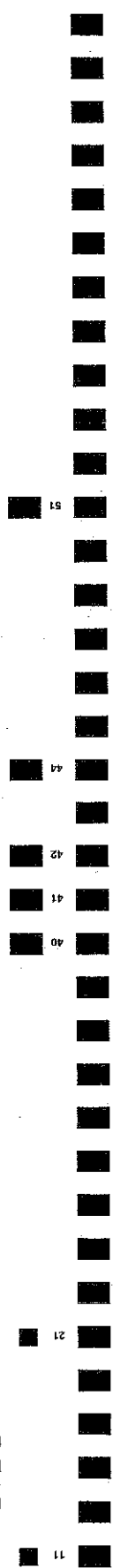
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NONPARTISAN OFFICES		COURT OF APPEALS <small>Shall the following judges be retained in office?</small>	ASSOCIATE JUDGE <small>Shall the following judges be retained in office?</small>	
SOIL AND WATER CONSERVATION DISTRICT COMMISSIONER <small>VOTE FOR NO MORE THAN TWO</small>		Gayle Vogel	Cynthia M. Moisan	
<input type="radio"/> Jane Clark	<input type="radio"/> YES	<input type="radio"/> YES	<input type="radio"/> YES	
<input type="radio"/> Cynthia E. Valin	<input type="radio"/> NO	<input type="radio"/> NO	<input type="radio"/> NO	
<input type="radio"/> Write-in				
<input type="radio"/> Write-in				
COUNTY AGRICULTURAL EXTENSION COUNCIL <small>VOTE FOR NO MORE THAN FIVE</small>		David R. Danilson	ASSOCIATE JUVENILE <small>Shall the following judge be retained in office?</small>	
<input type="radio"/> Harold J. Hommes	<input type="radio"/> YES		Constance Cohen	
<input type="radio"/> Dennis Goering	<input type="radio"/> NO		<input type="radio"/> YES	
DISTRICT COURT <small>Shall the following judges be retained in office?</small>		Robert B. Hanson	<input type="radio"/> NO	
<input type="radio"/> Jaime Naig	<input type="radio"/> YES		ASSOCIATE PROBATE <small>Shall the following judge be retained in office?</small>	
<input type="radio"/> Patricia K. Tice	<input type="radio"/> NO		Ruth B. Klotz	
<input type="radio"/> Donald Geiger		Robert A. Hutchison	<input type="radio"/> YES	
<input type="radio"/> Edward A. Furchtenicht	<input type="radio"/> YES		<input type="radio"/> NO	
<input type="radio"/> Carol Legg Zeigler	<input type="radio"/> NO		CONSTITUTIONAL QUESTIONS	
<input type="radio"/> Write-in		Don Carlos Nickerson	1	
<input type="radio"/> Write-in	<input type="radio"/> YES		SHALL THE FOLLOWING AMENDMENT TO THE CONSTITUTION BE ADOPTED?	
<input type="radio"/> Write-in	<input type="radio"/> NO	Joel D. Novak	Summary: Adopts Iowa's Water and Land Legacy Amendment which creates a dedicated trust fund for the purposes of protecting and enhancing water quality and natural areas in the State including parks, trails, and fish and wildlife habitat, and conserving agricultural soils in this State.	
<input type="radio"/> Write-in	<input type="radio"/> YES		(Full text posted inside of voting booth)	
<input type="radio"/> Write-in	<input type="radio"/> NO	Glenn E. Pille	<input type="radio"/> YES	
JUDGES			<input type="radio"/> NO	
SUPREME COURT <small>Shall the following judges be retained in office?</small>		Karen A. Romano	2	
<input type="radio"/> Michael J. Streit	<input type="radio"/> YES		Shall there be a convention to revise the Constitution, and propose amendment or amendments to same?	
<input type="radio"/> YES	<input type="radio"/> NO	Scott Rosenberg	<input type="radio"/> YES	
<input type="radio"/> Marsha Ternus	<input type="radio"/> YES		<input type="radio"/> NO	
<input type="radio"/> YES	<input type="radio"/> NO	Carla T. Schemmel	PUBLIC MEASURE	
<input type="radio"/> NO			A	
<input type="radio"/> David L. Baker	<input type="radio"/> YES		SHALL THE FOLLOWING PUBLIC MEASURE BE ADOPTED?	
<input type="radio"/> YES	<input type="radio"/> NO		Summary: The continued operation of gambling games at Prairie Meadows Racetrack and Casino in Polk County is approved.	
COURT OF APPEALS <small>Shall the following judges be retained in office?</small>		James D. Birkenholz	(Full text posted inside of voting booth)	
<input type="radio"/> Rick Doyle	<input type="radio"/> YES		<input type="radio"/> YES	
<input type="radio"/> YES	<input type="radio"/> NO	Odeff McGhee	<input type="radio"/> NO	
<input type="radio"/> NO				
<input type="radio"/> Ed Mansfield	<input type="radio"/> YES			
<input type="radio"/> YES	<input type="radio"/> NO			
<input type="radio"/> NO				
<input type="radio"/> Amanda Potterfield	<input type="radio"/> YES			
<input type="radio"/> YES	<input type="radio"/> NO			
<input type="radio"/> NO				

TURN THE BALLOT OVER



15

14

12

11

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21

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IN THE IOWA DISTRICT COURT FOR POLK COUNTY

THOMAS W. GEORGE, JOHN P.
ROEHRICK, and CARLTON G. SALMONS,

Plaintiffs,

vs.

MICHAEL A. MAURO, in his Official
Capacity as State Commissioner of Elections,
and MARSHA TERNUS, MICHAEL J.
STREIT, and DAVID L. BAKER,
in their Official Capacities as
Justices of the Iowa Supreme Court

Defendants.

EQUITY NO.: CE673B

**APPLICATION FOR
TEMPORARY INJUNCTION
(EXPEDITED HEARING REQUESTED)**

FILED
POLK COUNTY, I.A.
10 DEC 13 PM 2: 35
CLERK DISTRICT COURT

COME NOW the Plaintiffs, Thomas W. George, John P. Roehrick, and Carlton G. Salmons, pursuant to Iowa R. Civ. P. 1.1502(1), and, for their Application, state:

1. There is on file a Petition in Equity for a Declaratory Judgment and Permanent Injunction to which this Application relates.
2. As shown by the Petition, there was a general election held on Tuesday, November 2, 2010, which concerned a Judicial Election regarding the retention to office of three Iowa Supreme Court Justices, Marsha Ternus, Michael J. Streit, and David L. Baker.
3. That upon information and belief, a majority of the citizens throughout the State of Iowa at such election voted not to retain in office the above-referenced Supreme Court Justices, now Defendants in this case.
4. The Petition asserts that the ballot used in the above-referenced Judicial Election was utterly void and of no force and effect as in violation of the mandatory provisions of Iowa

Constitution, Article V, Section 17, requiring for such election use of a "separate ballot", and that such Judicial Election itself is consequently void and invalid.

5. That, by the provisions of Iowa Constitution, Article V, Section 17, the terms of Defendant Justices will expire on December 31, 2010, leaving only four other Justices of the Iowa Supreme Court, Justices Cady, Wiggins, Appel, and Hecht, to continue the business of the Court unless this temporary injunction is granted continuing beyond December 31, 2010 the terms of the three Defendant Justices under the Declaratory Judgment sought that the Judicial Election of November 2, 2010 was invalid.

6. That in the ordinary course of events, were it ruled that the Judicial Election of November 2, 2010 was invalid, then the State Commissioner of Elections would notify the Chairperson of the Judicial Nominating Commission of the vacancies created, See Iowa Code Section 46.12, such that the Judicial Nominating Commission could timely commence its work in filling such vacancies. See Iowa Code Sections 46.13 - 46.15.

7. That attached hereto as Exhibit A is a true and accurate copy of a lawsuit filed in the United States District Court for the Southern District of Iowa, entitled Steven Carlson, et. al. v. Justice Mark Cady, et. al., Case No.: 4:10-cv-00587, filed December 8, 2010, seeking a Declaratory Judgment that provisions of Iowa Code Chapter 46, under which the Judicial Nominating Commission is to act, are unconstitutional. Material here is that such lawsuit seeks a preliminary injunction against the meeting of the current members of the Judicial Nominating Commission for the very purpose of filling the vacancies created by the Judicial Election vote of November 2, 2010.

8. That the invalidity of the ballot used in the November 2, 2010 Judicial Election which, as pleaded in this action, consequently voids that election, in itself, presents Constitutional questions of surpassing importance to the proper and lawful composition of the Iowa Supreme Court

and whether the terms of Defendant Justices Ternus, Streit, and Baker are to lawfully expire on December 31, 2010, or whether such terms lawfully continue after December 31, 2010.

9. That the pendency of the above-referenced federal lawsuit, seeking a preliminary injunction against the activities and work of the currently constituted Judicial Nominating Commission, on grounds that the constitutional and statutory provisions under which it is to conduct its affairs in view of the Judicial Election held November 2, 2010, are unconstitutional and void, further threatens the proper and lawful composition of the Iowa Supreme Court, and, at least, promises to significantly delay the appointment of three new Justices to that Court, were this action to fail.

10. That resolution of this action presents the greatest urgency to the Iowa Supreme Court, as the highest Constitutional Court of the State of Iowa, to all of its current seven Justices, to the people of the State of Iowa who await final decisions lawfully decided by those legally qualified to render them, and to the lawyers who practice before that Court seeking speedy justice for their clients. Further, the pendency of the above-referenced federal case promises further disruption and delay to the orderly and lawful workings of the Iowa Supreme Court unless in this action the requested temporary injunction is granted.

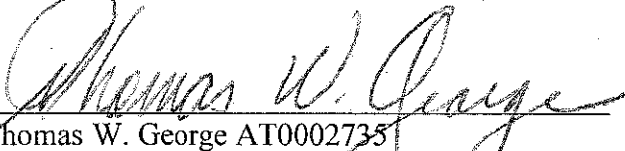
11. That Defendant Justices Marsha Ternus, Michael J. Streit, and David L. Baker should be temporarily enjoined from vacating their offices as Justices of the Iowa Supreme Court on and after December 31, 2010 until the final Ruling in this action; or upon the lawful operation of the Judicial Nominating Commission resulting in the appointment of qualified successors to any lawfully determined vacancy, or upon the results of any Special Election, whichever occurs last.


12. That pursuant to Iowa R. Civ. P. 1.1504, no Petition for Temporary Injunction or other Petition seeking the same relief, in whole or in part, has been previously presented to and refused by any other District Court Judge or Supreme Court Justice.


WHEREFORE, the Plaintiffs, Thomas W. George, John P. Roehrick, and Carlton G. Salmons, pray that this Court set a hearing hereon, and thereafter issue a temporary injunction ordering that Defendant Iowa Supreme Court Justices Marsha Ternus, Michael J. Streit, and David L. Baker are restrained and enjoined from vacating their offices as Justices of the Iowa Supreme Court on and after December 31, 2010 pending final Ruling of this Court in these premises; or upon the lawful operation of the Judicial Nominating Commission resulting in the appointment of qualified successors to any lawfully determined vacancy; or the results of any Special Election, whichever last occurs.

Respectfully submitted,

GAUDINEER, COMITO & GEORGE, L.L.P.


Thomas W. George AT0002735


John P. Roehrick AT0006733

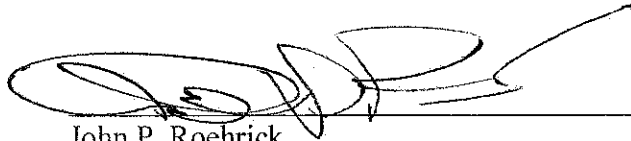

Carlton G. Salmons AT0006950
3737 Westown Parkway, Ste. 2D
West Des Moines, IA 50266
Telephone: 515/327-1750
Facsimile: 515/327-1250
Email: gaudineercomito@qwestoffice.net

Original filed.

AFFIDAVIT

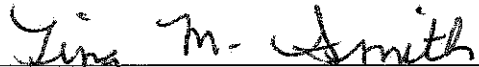
STATE OF IOWA)
)SS.
COUNTY OF POLK)

I, John P. Roehrick, being first duly sworn upon oath, depose and state that I am one of the Plaintiffs in the above-entitled action, that the allegations in the Petition for Declaratory Judgment and Permanent Injunction and in the Application for Temporary Injunction, which this Affidavit supports, are true and correct as I verily believe.



John P. Roehrick

Subscribed and sworn to before me on this 13th day of December, 2010.



NOTARY PUBLIC in and for the State of Iowa



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. _____

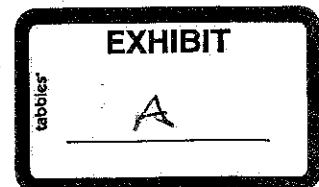
Expedited Consideration and Oral Argument Requested

Verified Complaint for Declaratory and Injunctive Relief

Plaintiffs Steven Carlson, Mary Granzow, Richard Kettells, and William Ramsey complain against Defendants as follows:

1. This is a facial and as-applied challenge to the constitutionality of 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, under the Fourteenth Amendment to the Constitution of the United States.

Verified Complaint



2. Plaintiffs challenge the above sections of the Iowa Constitution and Code because the system they establish excludes Iowa voters from participation in the election of the Elected Attorney Members of the State Judicial Nominating Commission and, therefore, denies Iowa voters the right to equal participation in the selection of the Justices of the Iowa Supreme Court and denies them the right to vote for the Elected Attorney Members of the Nominating Commission.

3. Plaintiffs challenge the system for selecting Supreme Court Justices in Iowa with respect to the manner in which the members of the State Judicial Nominating Commission are selected. The Commission is given the power to select the nominees for vacant positions on the Iowa Supreme Court, as well as on the Court of Appeals. Iowa Const. art. V, § 15; Iowa Code §§ 46.12 to 46.15. The Governor is limited to selecting one of the Commission's three nominees to fill a vacancy. Iowa Code § 46.15. If the Governor fails to make an appointment from the Commission's list, the chief justice of the Iowa Supreme Court is required to make the appointment from the list. Iowa Code § 46.15.2. Invariably, one of the three nominees selected by the Commission will become a justice or judge in Iowa, so that the Commission determines the composition of the judiciary in Iowa. Despite having this significant power and function, seven of the fifteen members of the Commission are elected exclusively by the members of the bar of Iowa. Iowa Const. art. V, § 16; Iowa Code §§ 46.2, 46.7. This restricted election denies the citizens of Iowa the right to vote and the right to participate equally in the selection of justices and judges in Iowa.

Jurisdiction and Venue

4. This action arises under Section I of the Civil Rights Act of 1871, 17 Stat. 13, 42

U.S.C. § 1983, and the Fourteenth Amendment to the Constitution of the United States.

5. The jurisdiction of this Court over the claims arising under 42 U.S.C. § 1983 is based on 28 U.S.C. § 1343(a). The jurisdiction of this Court over the claims arising under the Fourteenth Amendment rests on 28 U.S.C. §§ 1331 and 1343(a).

6. Venue is proper under 28 U.S.C. § 1391(b) because the principal defendants, the Members of the State Judicial Nominating Commission in their official capacities, reside in the Southern District of Iowa.

Parties

7. Plaintiff Steven Carlson is a citizen and registered voter of the State of Iowa. He resides in Sioux City, Woodbury County, Iowa.

8. Plaintiff Mary Granzow is a citizen and registered voter of the State of Iowa. She resides in Des Moines, Polk County, Iowa.

9. Plaintiff Richard Kettells is a citizen and registered voter of the State of Iowa. He resides in Pleasant Hill, Polk County, Iowa.

10. Plaintiff William Ramsey is a citizen and registered voter of the State of Iowa. He resides in Waterloo, Black Hawk County, Iowa.

11. Defendant Justice Mark Cady is the current Chairman of the State Judicial Nominating Commission.

12. Justice Cady is Chairman of the Commission because he is senior in length of service on the Iowa Supreme Court. Iowa Const. art. V, § 16.

13. The Chairman acts under color of law and is sued in his official capacity as a member member of the Commission.

14. Defendants Jean Dickson, Steven J. Pace, Beth Walker, Amy J. Skogerson, Joseph L. Fitzgibbons, Guy R. Cook, and H. Daniel Holm, Jr., are the seven Elective Members of the State Judicial Nominating Commission.

15. The Elective Members are selected one from each congressional district in Iowa through an election limited to the members of the bar of Iowa who are residents of the relevant congressional district and licensed to practice law in Iowa. Iowa Const. art. V, § 16; Iowa Code §§ 46.2, 46.7. The Elective Members serve six-year terms. Iowa Code §§ 46.2.

16. The Elective Members of the Commission act under color of law and are sued in their official capacities.

17. Defendants Margaret G. Redenbaugh, Coleen A. Deneffe, Mary Beth Lawler, Madalin A. Williams, David C. Cochran, Steven Brody, and Timothy L. Mikkelsen are the seven Appointive Members of the Commission.

18. The seven Appointive Members are appointed to the Commission, one from each congressional district in Iowa, for six-year terms by the Governor subject to confirmation by the Iowa senate. Iowa Const. art. V, § 16.

19. The seven Appointive Members of the Commission act under color of law and are sued in their official capacities.

20. The Iowa Constitution empowers the Defendants who are members of the Commission, acting by a majority of the statutory number of commissioners, to nominate three persons from among whom the Governor must select to fill a vacancy on the Iowa Supreme Court. Iowa Const. art. V, § 15; Iowa Code §§ 46.12 to 46.15.

21. David K. Boyd is the current State Court Administrator.

22. The State Court Administrator acts under the color of law and is sued in his official capacity.

23. The Iowa Statutes empower the State Court Administrator to conduct the elections of the Elective Members of the Commission. Iowa Code §§ 46.5, 46.8, 46.9, 46.9A, 46.10.

Facts

24. The State Judicial Nominating 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.

25. The composition of the Commission is set forth in the Iowa Constitution as follows:

There shall be not less than three nor more than eight appointive members, as provided by law, and an equal number of elective members on such commission, all of whom shall be electors of the state. The appointive members shall be appointed by the governor subject to confirmation by the senate. The elective members shall be elected by the resident members of the bar of the state. The judge of the supreme court who is senior in length of service on said court, other than the chief justice, shall also be a member of such commission and shall be its chairman.

26. The current number of appointive and elective members is set at seven for each type. Iowa Code §§ 46.1, 46.2. This corresponds to the congressional districts in Iowa in 1965. The appointments and elections are made according to the congressional districts as they existed at that time.

27. The Iowa Constitution confers upon the Commission, as an entity created by the Constitution, the power to “make nominations to fill vacancies in the supreme court.” Iowa Const. art. V, § 16; *see also The Federalist No. 41*, at 223 (James Madison) (Clinton Rossiter ed., 1999) (stating that the purpose of a constitution is to establish “the particular structure of the government and the distribution of this power among its several branches”).

28. At all times, provided there are no existing vacancies, at least seven of the fifteen members of the Commission are members of the Iowa bar. Iowa Code §§ 46.2, 46.7. There is no prohibition on the Appointive Members also being members of the bar.

29. Seven members of the Commission, the Elective Members are elected exclusively by the members of the bar in Iowa. Iowa Const. art. V, § 16; Iowa Code §§ 46.2, 46.7.

30. The Appointive and Elective Members of the Commission serve six year terms. Iowa Code §§ 46.1, 46.2.

31. 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.

32. Plaintiffs, because they are not attorneys, are excluded from the elections of the Elective Members and have no say whatsoever in their selection. *Id.*

33. The election of the Elective Members to positions on the Commission is not confirmed or ratified in any way by the state legislature. *See id.*

34. 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.

35. The State Judicial Nominating Commission will 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 will then consider the individuals available for the position and submit three nominees 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.

36. One of the three nominees, for each vacancy, selected by the Commission will invariably become a justice on the Iowa Supreme Court because the Governor must fill the vacancy by choosing one of the nominees. Iowa Const. art. V, § 15; Iowa Code § 46.15.

37. The nominations from the Commission cannot be rejected by the Governor or the legislature. Iowa Const. art. V, § 15; Iowa Code § 46.15.

38. The appointment of a nominee to fill the vacancy is not subject to any kind of confirmation by the legislature. *See* Iowa Const. art. V, § 15; Iowa Code § 46.15.

39. Upon receiving the nominations, the Governor has thirty days to make a selection to fill the vacancy. Iowa Const. art. V, § 15.

40. If the Governor fails to make an appointment within thirty days, the current Chief Justice of the Iowa Supreme Court must do so. Iowa Const. art. V, § 15; Iowa Code § 46.15.2.

41. The Commission also makes the nominations for vacancies on the Iowa Court of Appeals in the same manner. Iowa Code § 46.14A.

42. The Commission determines the composition of the judicial branch of government in Iowa.

43. Plaintiffs, as citizens of Iowa, are subject to the decisions of the Iowa Supreme Court and Courts of Appeals and to the laws of Iowa as interpreted by the Iowa Supreme Court.

Count 1

The Selection of Judges in Iowa Violates the Fourteenth Amendment to the U.S. Constitution by Denying Plaintiffs the Right to Equal Participation in the Selection of Judicial Officials.

44. Plaintiffs re-allege and incorporate by reference all allegations contained in paragraphs one through forty-three set forth above.

45. The Fourteenth Amendment to the United States Constitution provides that, “No State shall make or enforce any law which shall . . . deny to any person within its jurisdiction the equal protection of the laws.” U.S. Const. amend. XIV, § 1.

46. The Equal Protection Clause guarantees to every citizen “the right to vote in elections without having his vote wrongfully denied, debased, or diluted.” *Hadley v. Junior College Dist. of Metro. Kansas City*, 397 U.S. 50, 52 (1970).

47. The right to vote is preservative of the fundamental right to self-governance, because that “[a]ny unjustified discrimination in determining who may participate . . . in the selection of public officials undermines the legitimacy of representative government.” *Kramer v. Union Free Sch. Dist. No. 15*, 395 U.S. 621, 626 (1969).

48. An arrangement that restricts an election to a certain group of citizens is subject to strict scrutiny. This “is required because some resident citizens are permitted to participate and some are not.” *Kramer*, 395 U.S. at 629.

49. Accordingly, “if a challenged statute grants the right to vote in a limited purpose election to some otherwise qualified voters and denies it to others, ‘the Court must determine whether the exclusions are necessary to promote a compelling state interest.’” *Cipriano v. City of Houma*, 395 U.S. 701, 704 (1969) (quoting *Kramer*, 395 U.S. at 627).

50. While the United States Supreme Court has approved basic residency, age, and citizenship requirements to participate in an election, “[p]resumptively, when all citizens are affected [by an election], the Constitution does not permit . . . the exclusion of otherwise qualified citizens from the franchise.” *Phoenix v. Kolodziecki*, 399 U.S. 204, 209 (1970).

51. If an entity performs a traditional government function that affects every citizen, all otherwise qualified citizens must be included in the election for that entity. *See Hellebust v. Brownback*, 42 F.3d 1331, 1334-35 (10th Cir. 1994).

52. Selectively giving a certain group of citizens more electoral influence and granting the franchise on a selective basis always poses “the danger of denying some citizens any effective voice in governmental affairs which substantially affect their lives.” *Kramer*, 395 U.S. at 627.

53. Public officials may be selected by election or through appointment. *Id.* at 629. But the Equal Protection Clause must be respected regardless of how an official is selected. While the appointment of officials may make the influence of each voter *indirect*, this is constitutional when the official making the appointment is “elected consistent with the commands of the Equal Protection Clause,” thereby ensuring that each voter’s influence is *equal* to that of other citizens. *Id.* at 627 n.7. Ultimately, each citizen must be given an equal voice in the selection of government officials, however indirect that voice might be.

54. In order to justify limiting an election to a certain group, the state must show that the elected official does not exercise normal government power and that the group is disproportionately interested in and affected by the powers exercised by the official. *Hellebust*, 42 F.3d at 1333-35. This disproportion must be substantial, such that there is a compelling reason to restrict the franchise to that group. *Cipriano*, 395 U.S. at 704; *Kolodziecki*, 399 U.S. at 209

(holding that the differences between the interest of the included group and the interests of all citizens must be “sufficiently substantial to justify excluding the latter from the franchise.”).

55. The state must then show that all citizens are “in fact substantially less interested or affected than those . . . included.” *Cipriano*, 395 U.S. at 704. Otherwise, the state law is not narrowly tailored to meet the compelling government interest.

56. The seven Appointive Members of the State Judicial Nominating Commission are appointed by the Governor, who is selected through an election in which no qualified citizen’s vote is denied or diluted. *See* Iowa Const. art. II, § 1.

57. Plaintiffs are granted the franchise to vote for the Governor, and their vote is not diluted. Iowa Const. art. IV, § 2.

58. The Elective Members are selected through an election in which only resident members of the Iowa bar may participate. Iowa Const. art. V, § 16; Iowa Code § 46.7. All citizens who are not members of the bar are excluded from these elections.

59. Plaintiffs Steven Carlson, Mary Granzow, Richard Kettells, and William Ramsey are excluded from voting for the Elective Members of the Commission because they are not members of the bar.

60. Compared to the members of the bar in Iowa, Plaintiffs Steven Carlson, Mary Granzow, Richard Kettells, and William Ramsey have substantially less influence over who is nominated to become an Iowa Supreme Court justice or Court of Appeal judge.

61. The nomination of judges is a traditional government function. U.S. Const. art. II, § 2; *see Richardson v. Koshiba*, 693 F.2d 911, 914-15 (9th Cir. 1982); *In re Advisory Opinion to the Governor*, 276 So. 2d 25, 29-30 (Fla. 1973).

62. Plaintiffs have a substantial interest in, and are significantly affected by, the nomination of the justices and judges of Iowa's courts because "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).

63. Because the members of the Commission exercise a traditional government function that has an effect on all citizens of Iowa, the election of all Members of the Commission must be open to all citizens of Iowa who are qualified to vote. Iowa Const. art. II, § 1.

64. The Supreme Court has recognized a "significant exception" where the selection of government officials can be restricted to a certain group of qualified citizens, but this case does not satisfy the exception. *Ball v. James*, 451 U.S. 355, 360 (1981).

65. The franchise may be restricted to a specific group of voters, while excluding other qualified citizens, when the official or government entity elected has a "special limited purpose" and its activities have a "disproportionate effect" on the specific group. *Salyer Land Co. v. Tulare Lake Basin Water Storage Dist.*, 410 U.S. 719, 727-28 (1973).

66. The duties of certain government officials and entities may be "so far removed and so disproportionately affect different groups that a popular election in compliance with [the Equal Protection Clause] might not be required." *Hadley*, 397 U.S. at 56. But this exception does not apply in situations where the official or entity exercises general government power and performs a vital government function. *Id.*; *Ball*, 451 U.S. at 366.

67. To fall under this special limited purpose exception, the government entity, in this case the State Judicial Nominating Commission, must serve a narrow, nominally governmental function and the members of the Iowa bar must be shown to have a disproportionate relationship

with that function. *Id.* at 357.

68. A government entity has a narrow function that qualifies for the “special limited purpose” exception when it does not administer normal functions of government, has merely a nominal public character, and its duties are not a traditional element of governmental sovereignty such that it must answer to the people as a whole. *Id.* at 366-68.

69. The Members of the Commission are given the power to select nominees to fill vacant positions on Iowa’s courts, including the supreme court. The Governor is limited to selecting one of the nominees, so that the Commission decides who will sit in judgment over the citizens of Iowa.

70. The nomination of justices and judges is a traditional function of government. The Commission has the power to nominate members of the judiciary, and therefore to determine the composition of the third branch of government in the State of Iowa.

71. The aspect of the limited purpose of a government entity that would justify a restricted franchise is “the disproportionate relationship the [entity’s] functions bear to the specific class of people whom the system makes eligible to vote.” *Id.* at 370. The question is “whether the effect of the entity’s operations . . . [is] disproportionately greater than the effect on those seeking the vote.” *Id.* at 371.

72. In order to satisfy the limited purpose exception, not only must the effect of the power to nominate judges on the members of the Iowa bar be disproportionately greater than upon the Plaintiffs and all other qualified voters, *id.*, but Plaintiffs and all other qualified voters must be “in fact substantially less interested or affected” than the bar members, *Cipriano*, 395 U.S. at 704.

73. Plaintiffs are subject to the jurisdiction and decisions of the justices and judges of Iowa's courts.

74. Plaintiffs are subject to the laws and constitution of the State of Iowa, which are interpreted and applied by the justices and judges of Iowa's courts.

75. The Iowa Supreme Court determines the rights of Iowa's citizens, including the rights of the Plaintiffs, under the constitution and laws of the State.

76. Plaintiffs are legitimately and substantially interested in the composition of the third branch of their own government.

77. The selection and nomination of justices and judges substantially affects all of Iowa's citizens because of the power and authority entrusted to justices and judges.

78. While the members of the Iowa bar may have somewhat *different* interests in who the justices and judges are in Iowa, this interest is not substantially *greater* than the interest of all citizens of Iowa. *See Kolodziejcki*, 399 U.S. at 212.

79. The government cannot show that the restriction of the election of the Elective Members of the Commission, who nominate justices and judges and determine the composition of the Iowa judiciary, is narrowly tailored to a compelling government interest.

80. Nor does the selection of the Commission members qualify for the "special limited purpose" exception, because the Commission performs a normal function of government, does not have a merely nominal public character, and does not disproportionately affect the members of the Iowa bar compared to the rest of Iowa's citizens, including Plaintiffs.

81. Therefore, Iowa's system for selecting its supreme court justices violates Plaintiffs' Equal Protection rights and should be permanently enjoined and declared unconstitutional.

Count 2

The Election of the Elective Members of the State Judicial Nominating Commission Violates the Fourteenth Amendment to the U.S. Constitution by Denying Plaintiffs the Right to Vote.

82. Plaintiffs re-allege and incorporate by reference all allegations contained in paragraphs one through eighty-one set forth above.

83. Plaintiffs have the right to vote for officials who exercise government power affecting them. *See Reynolds v. Sims*, 377 U.S. 533, 554 (1964); *Hellebust*, 42 F.3d at 1333.

84. The State of Iowa excludes all citizens who are not bar members from participating in the elections for the Elective Members of the State Judicial Nominating Commission, Iowa Const. art. V, § 16; Iowa Code § 46.7, even though those officials exercise a traditional governmental function, namely, the nomination of judges, U.S. Const. art. II, § 2.

85. The State of Iowa must show a compelling interest for this voter qualification and that the classification is narrowly tailored to that interest. *Cipriano*, 395 U.S. at 704.

86. Because all Iowa citizens, and not just a single occupation, are substantially interested in and affected by the power to nominate justices to the Iowa Supreme Court, the election of members of the Commission must be open to all otherwise qualified voters, and cannot be restricted based upon occupation. *See Hellebust*, 42 F.3d at 1334-35.

87. Because the Commission exercises a traditional government function, and attorneys are not disproportionately affected by that function, Iowa does not have a compelling interest in limiting the election of the members of the Commission by occupation. *Salyer*, 410 U.S. at 727-28.

88. Because all Iowa citizens are substantially interested in and affected by the

nomination of Iowa Supreme Court justices, the restriction of the elections of certain members of the Commission based upon occupation is not narrowly tailored to any purported state interest.

89. Therefore, the elections of the Elective Members of the Nominating Commission violate the Equal Protection Clause because they deny Plaintiffs and all non-bar member Iowa citizens the right to vote in an election that affects them. *Kolodzeski*, 399 U.S. at 209. And so, these elections should be declared unconstitutional and permanently enjoined from being conducted because of their unconstitutional qualifications.

Prayer for Relief

Wherefore, Plaintiffs pray for the following relief:

1. A declaratory judgment declaring Iowa Const. art. V, § 16, and Iowa Code §§ 46.2, 46.4, 46.5, 46.7, 46.8, 46.9, 46.9A, 46.10, and 46.14 facially unconstitutional.
2. In the alternative, a declaratory judgment declaring Iowa Const. art. V, § 16, and Iowa Code §§ 46.2, 46.4, 46.5, 46.7, 46.8, 46.9, 46.9A, 46.10, and 46.14 unconstitutional as applied to the nomination to fill the current impending vacancies on the Iowa Supreme Court.
3. A preliminary and permanent injunction enjoining Defendants Jean Dickson, Steven J. Pace, Beth Walker, Amy J. Skogerson, Joseph L. Fitzgibbons, Guy R. Cook, and H. Daniel Holm, Jr., the seven Elective Members of the State Judicial Nominating Commission, from exercising any powers under Iowa Const. art. V, § 15, 16 and Iowa Code §§ 46.12 through 46.14A and from taking part in any deliberations and voting for nominees to fill the current impending vacancies created by the retention elections lost by Chief Justice Marsha Ternus, Justice David Baker, and Justice Michael Streit.
4. A preliminary and permanent injunction enjoining Defendants Justice Mark Cady,

Margaret G. Redenbaugh, Coleen A. Denefe, Mary Beth Lawler, Madalin A. Williams, David C. Cochran, Steven Brody, and Timothy L. Mikkelsen, from observing the requirement that they act by the affirmative vote of a majority of the full statutory number of commissioners under Iowa Code § 46.14, so that they may proceed with the nomination procedure acting by majority vote.

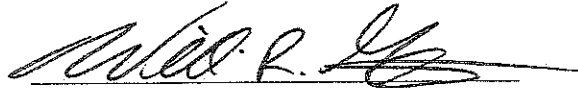
5. A preliminary and permanent injunction enjoining Defendant David K. Boyd from performing any actions under Iowa Code §§ 46.5, 46.8, 46.9, 46.9A, 46.10 and administering any future elections of the Elective Members of the State Judicial Nominating Commission.

5. Costs and attorneys fees pursuant to any applicable statute or authority; and

6. Any other relief this Court in its discretion deems just and appropriate.

December 8, 2010

Respectfully submitted,



William R. Gustoff, Iowa Bar # 14986

wgustoff@gbmglaw.com

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Lead Counsel for Plaintiffs

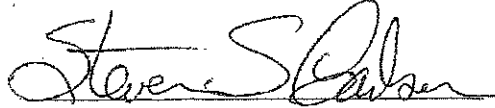
*Pro Hac Vice Application Pending

VERIFICATION

I, Steven Carlson, declare as follows:

1. I have personal knowledge of myself and my activities, including those set out in the foregoing *Complaint*, and if called upon to testify I would competently testify as to the matters stated herein.
2. I verify under penalty of perjury under the laws of the United States of America that the factual statements in this *Complaint* concerning myself and my activities are true and correct.

Executed on December 4, 2010


Steven Carlson

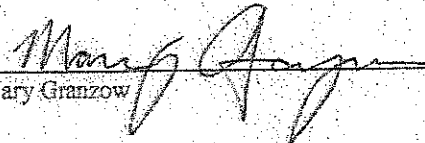
VERIFICATION

I, Mary Granzow, declare as follows:

1. I have personal knowledge of myself and my activities, including those set out in the foregoing *Complaint*, and if called upon to testify I would competently testify as to the matters stated herein.

2. I verify under penalty of perjury under the laws of the United States of America that the factual statements in this *Complaint* concerning myself and my activities are true and correct.

Executed on 12/2/2010


Mary Granzow

VERIFICATION

I, Richard Kettells, declare as follows:

1. I have personal knowledge of myself and my activities, including the foregoing *Complaint*, and if called upon to testify I would competently testify to matters stated herein.
2. I verify under penalty of perjury under the laws of the United States that the factual statements in this *Complaint* concerning myself and my activities are correct.

Executed on 12-2-2010


Richard Kettells

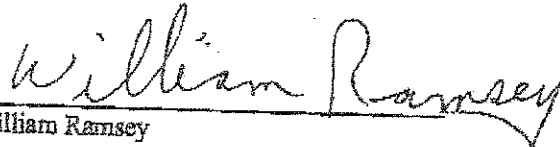
VERIFICATION

I, William Ramsey, declare as follows:

1. I have personal knowledge of myself and my activities, including those set out in the foregoing *Complaint*, and if called upon to testify I would competently testify as to the matters stated herein.

2. I verify under penalty of perjury under the laws of the United States of America that the factual statements in this *Complaint* concerning myself and my activities are true and correct.

Executed on 12-1-2010



William Ramsey

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

THOMAS W. GEORGE, JOHN P.
ROEHRICK, and CARLTON G. SALMONS,

Plaintiffs,

vs.

MICHAEL A. MAURO, in his Official
Capacity as State Commissioner of Elections,
and MARSHA TERNUS, MICHAEL J.
STREIT, and DAVID L. BAKER,
in their Official Capacities as
Justices of the Iowa Supreme Court

Defendants.

EQUITY NO.: CE67313

ORDER FOR HEARING

FILED
POLK COUNTY, IA
10 DEC 13 PM 2:49
IOWA DISTRICT COURT

NOW on this 13th day of December, 2010, the above-entitled case comes before the Court on Plaintiffs' Application for Temporary Injunction (Expedited Relief Requested), and the Court, being duly advised in the premises, finds that Plaintiffs' Application should now be set down for hearing.

IT IS THEREFORE ORDERED that Plaintiffs' Application for Temporary Injunction shall come on for hearing on the 20th day of December, 2010, before the undersigned.
9:00 Am Room 308

1st Scott Rosenberg
JUDGE, FIFTH JUDICIAL DISTRICT

Original filed.

Copy to:

Iowa Attorney General