

IN THE IOWA DISTRICT COURT IN AND FOR POLK COUNTY

THOMAS J. DUFF,)	NO. _____
)	
Plaintiff,)	PETITION, APPLICATION FOR
)	INJUNCTIVE RELIEF AND FOR
vs.)	EXPEDITED HEARING
)	
GOVERNOR KIMBERLY K.)	
REYNOLDS, GLEN DICKINSON,)	
LESLIE HICKEY and DAN HUITINK,)	
)	
Defendants.)	

Plaintiff for cause of action states:

1. Plaintiff Thomas J. Duff is a lawyer licensed in Iowa who regularly practices in Iowa courts and is a resident of Polk County.
2. In the summer of 2019 Plaintiff Duff was an unsuccessful applicant before the State Judicial Nominating Commission for a vacancy on the Iowa Court of Appeals.
3. Defendant Kimberly Kay Reynolds is the Governor of Iowa and as such is the Chief Executive for the state, responsible for ensuring the execution of the State's statutes. The Governor is sued in her official capacity.
4. Defendant Glen Dickinson is the Director of the Legislative Services Agency, a nonpartisan central legislative staff agency under the direction and control of the Legislative Council. Its duties include publication of the Iowa Acts. Iowa Code Chapter 2A. Glen Dickinson is sued in his official capacity.
5. Defendant Leslie Hickey is the Iowa Code Editor. The Iowa Code Editor is appointed by the Director of the Legislative Services Agency. The Editor's duties include publishing the Iowa Acts. Iowa Code Section 2B.13. Leslie Hickey is sued in her official capacity.

6. Defendant Dan Huitink was appointed by the Governor to the State Judicial Nominating Commission on May 10, 2019. He is sued in his official capacity.

The Law

7. The Iowa Constitution, Article III, Section 29, prohibits logrolling by requiring a legislative act to have only one subject.

Sec. 29. Acts — one subject — expressed in title. SEC. 29. Every Act shall embrace but one subject, and matters properly connected therewith; which subject shall be expressed in the title. But if any subject shall be embraced in an Act which shall not be expressed in the title, such Act shall be void only as to so much thereof as shall not be expressed in the title.

8. The Iowa Constitution, Article III, Section 29, requires the title of the bill to contain the subject matter of the bill to prevent fraud and surprise.

9. The Iowa Constitution, Article IV, Section 1, establishes separate and equal branches of government.

The powers of the government of Iowa shall be divided into three separate departments—the legislative, the executive, and the judicial: and no person charged with the exercise of powers properly belonging to one of these departments shall exercise any function appertaining to either of the others, except in cases hereinafter expressly directed or permitted.

10. The Iowa Constitution, Article V, vests the judicial power in the Supreme Court.

Background

11. Senate File 638 was known as the “Standings Bill,” providing for appropriations. However, it was amended during debate to change how judicial

nominating commissioners are selected and how the Chief Justice is selected and the term of office.

12. The Iowa legislature passed Senate File 638 as amended on April 27, 2019.

13. In passing Senate File 638, the Iowa legislature failed to amend the title to reflect the amendment.

14. On May 8, 2019, Governor Reynolds signed Senate File 638 into law (attached as Exhibit 1).

15. On May 10, 2019, Governor Reynolds used the new authority in Senate File 638 to appoint Dan Huitink as the ninth gubernatorial appointment to the State Judicial Nominating Commission.

16. A vacancy was created in the Iowa Court of Appeals with the retirement of Judge Gayle Vogel on July 1, 2019.

17. Plaintiff Duff applied for the vacant Court of Appeals position. On August 5, 2019 Plaintiff Duff was interviewed by the State Judicial Nominating Commission.

18. On August 5, 2019, the State Judicial Nominating Commission submitted three nominees to the Governor. Plaintiff Duff's name was not one of the nominees submitted by the State Judicial Nominating Commission to the Governor.

Constitutional Violations

Count I

19. Senate File 638 contained more than a single subject, in violation of the Iowa Constitution, Article III, Section 29.

20. The enactment of Senate File 638 is a violation of the Iowa constitutional protection against logrolling.

Count II

21. Senate File 638, in violation of the Iowa Constitution, Article III, Section 29, failed to include in its title an accurate description of the subject matter of the bill, which included changes to Iowa's Judicial Nominating Commission and selection and term of office of the Chief Justice of the Supreme Court.

22. The enactment of Senate File 638 is a violation of the Iowa constitutional protection to prevent surprise and fraud from being visited on the legislature and the public.

Count III

23. The enactment of Senate File 638 violates Article III and Article V of the Iowa Constitution by dictating to a separate and co-equal branch of government how its leadership (Chief Justice) should be selected and the term of office.

24. That portion of Senate File 638 pertaining to changes in the selection and term of office of the Chief Justice should be found unconstitutional as a legislative encroachment on judicial powers.

Injunctive Relief (IRCP 1.1501-1.1511)

25. Plaintiff is entitled to preliminary and permanent injunctive relief invalidating the changes contained in Senate File 638 that affect the selection of judicial nominating commissioners and selection and term of office of the the Chief Justice and enjoining the defendants from enforcing or utilizing its provisions.

26. Defendants are acting and threatening to act under color of state law to deprive plaintiffs of their constitutionally protected rights.

27. Plaintiff will suffer irreparable injury and will continue to suffer real and immediate threat of irreparable injury as a result of the existence, operation, enforcement and threat of enforcement of the challenged sections of Senate File 638.

28. Plaintiff has no plain, adequate or speedy remedy at law.

29. As shown by the attached affidavit (Exhibit 2), Plaintiff is entitled to relief which includes restraining the publication of that portion of Senate File 638 pertaining to the judicial nominating commissioners and the selection and term of office of the Chief Justice, which would greatly or irreparably injure plaintiff.

30. A petition with different plaintiffs sought the same relief but was refused by this court on June 23, 2019, wherein the court found plaintiffs lacked standing to proceed. *Rush, et al. v. Reynolds, et al.*, Case No. CVCV058127, is presently on appeal to the Iowa Supreme Court.

31. There are no foreseeable monetary damages that would arise from issuance of a temporary injunction order. Therefore, Plaintiff requests that should the Court order a bond be filed, that it not exceed \$100.

Request for Relief

Plaintiff respectfully requests an order in judgment:

1. Setting this matter for expedited hearing on the request for temporary injunctive relief;
2. Declaring those portions of Senate File 638 dealing with selection of judicial nominating commissioners and the selection and term of office of the Chief Justice to be unconstitutional;
3. Temporarily and thereafter permanently enjoining defendants as well as their officers, agents, employees, attorneys, and all persons in active concert or participation with them from enforcing or utilizing the changes contained in Senate File 638 dealing with selection of judicial nominating commissioners and the selection and term of office of the Chief Justice;
4. Awarding any further relief as the Court may deem just and proper.

/s/ Bob Rush

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