

IN THE SUPREME COURT OF IOWA

DANNY HOMAN, STEVEN J. SODDERS,
JACK HATCH, PAT MURPHY and
MARK SMITH
Plaintiffs,

v.

TERRY BRANSTAD, GOVERNOR STATE
OF IOWA and CHARLES M. PALMER,
IOWA DEPARTMENT OF
HUMAN SERVICES DIRECTOR
Defendants.

Supreme Court Case No. _____
Polk County Case No. EQCE075765

**RESISTANCE TO DEFENDANTS'
APPLICATION FOR APPEAL IN ADVANCE
OF FINAL JUDGMENT**

COMES NOW the Plaintiffs, and in Resistance to the Defendants' Application for Appeal in Advance of Final Judgment, respectfully state the following:

STATEMENT OF THE CASE

The District Court appropriately granted a preliminary injunction in this matter, ordering Governor Branstad to reopen the Iowa Juvenile Home at Toledo. The Toledo facility closed its doors on January 15, 2014, forcing the 21 youth served by the facility to be placed in alternative care and laying off the 93 employees of the facility.

In *Kleman v. Charles City Police Department* case, the court found that "there must be evidence in the form of **an affidavit or sworn testimony** upon which the court 'can ascertain the circumstance confronting the parties and balance the harm that a temporary injunction may prevent against the harm that may result from its issuance.'" (emphasis added) 373 N.W.2d 90, 96 (Iowa 1985). Consequently, the court appropriately granted a preliminary injunction based on the evidence presented in this case as well as the Affidavit provided by Plaintiff Danny Homan.

Despite the contention from the Defendants in this matter, the case at hand is not one that is contractual in matter nor is it significant that there is no current Iowa Supreme Court law discussing the concept of impoundment. Rather, the case at hand stems from a violation of Article IV, Section 9 of the Iowa Constitution, further making the preliminary injunction within the discretion of the District Court.

Ultimately, the District Court did not abuse their discretion in this matter. The standard for a preliminary injunction requires the court to use caution, however, a temporary injunction is a preventative remedy to maintain the status quo of the parties. *Lewis Investments, Inc. v. City of Iowa City*, 703 N.W.2d 180 (Iowa 2005). Likewise, the standard applied in granting a preliminary injunction is less stringent than the requirements for a permanent injunction. When the standards are analyzed in conjunction with the irreparable harm to the Plaintiffs in this matter, it is clear that not only was the preliminary injunction within the discretion of the District Court but it was necessary. Therefore, the Plaintiffs in this matter respectfully request that the interlocutory review of the District Court's preliminary injunction be denied.

FACTUAL AND PROCEDURAL HISTORY

On December 9, 2013, acting under the direction and approval of Governor Branstad, Charles Palmer gave notice that the Iowa Juvenile Home at Toledo was closing. In response to then notice, the Plaintiffs filed a Petition for Declaratory Judgment, Injunctive Relief and Writ of Mandamus on January 2, 2014. The Petition was based on based on impoundment and misappropriation of funds that had been legally appropriated to the operation of the Toledo Facility.

On January 10, 2014, the Plaintiffs filed an Application for Preliminary Injunction With Notice and Request for Hearing, based on the Defendants violations of the Iowa Constitution. The facility was officially closed ahead of schedule on January 15, 2014—contrary to the recommendations of the task force developed by Governor Branstad focused on improving the facility based on the best interest of the youth it serves.

On January 21, 2014, the Defendants responded to both of the Plaintiffs filings separately, asking for the matter to be dismissed, incorrectly stating that the Plaintiffs lacked standing and that the Petition failed to meet the requirements of Iowa law. The Plaintiffs then resisted the motions on January 24, 2014 and provided an affidavit for Plaintiff Danny Homan.

The case was then heard in the District Court of Polk County on January 31, 2014. Ultimately, resulting in a preliminary injunction that was granted by written order on February 5, 2014.

ARGUMENT

The District Court did not err or abuse its discretion in granting a preliminary injunction in this case. As set forth in the case of *Lewis Investments, Inc. v. City of Iowa City*;

A temporary injunction is a preventive remedy to maintain the status quo of the parties prior to final judgment and protect the subject of litigation. The issuance or refusal of a temporary injunction rests largely in the sound discretion of the trial court, dependent upon the circumstances of the particular case. One requirement for the issuance of a temporary injunction is a showing of the likelihood or probability of success on the merits of the underlying claim.

Permanent injunctive relief is an extraordinary remedy that is granted only when there is no other way to avoid irreparable harm to the plaintiff

703 N.W.2d 180 (Iowa 2005).

Therefore, the court appropriately evaluated the merits of this case along with the evidence and in accordance with the standard set forth by Iowa case law. After all, the Plaintiffs in this matter showed the clear presence of irreparable harm and their interest in the Constitutional violations of the Defendants. Making the preliminary injunction not only appropriate, but necessary in this matter. After all, the District Court was required to determine whether the facts in the case “show a necessity for the intervention of equity in order to protect rights cognizable in equity.” *Matlock v. Weets*, 531 N.W.2d 118, 123 (Iowa 1995).

Furthermore, the “issuance or refusal of a temporary injunction rests largely in the sound **discretion of the trial court** dependent upon the circumstance of a particular case. (emphasis added) *Lewis*, 703 N.W.2d. 180 at 184; citing *Kent Prods v. Hoegh*, 245 Iowa 205, 211, 61 N.W.2d 711, 714 (1953). Therefore, the Supreme Court’s review of the granted preliminary injunction in this matter would result in an abuse of its discretion.

Ultimately, the main issue at hand is whether the District Court acted within their discretion, granting the preliminary injunction as requested by the Plaintiffs in this case. This means, that the Defendants must prove that the judge acted outside of his discretion in making such a determination. However, based on the merits of this case and applicable Iowa law, it is impossible to demonstrate that the District Court abused its discretion. Therefore, it would be inappropriate for the Supreme Court to review the preliminary injunction.

I. The District Court acted within its discretion, granting a temporary injunction in this matter.

The Plaintiff's case in this matter is constitutional in nature. Specifically, the actions of the Defendant Governor constitute an impoundment of legally appropriated funds, violating Article IV, Section 9 of the Iowa Constitution.

While the Defendants in this matter truthfully assert that there is no Iowa Supreme Court case law discussing impoundment, their assertion that the absence would preclude an action based on impoundment is a far-fetched attempt at overcoming the strong claims against them. Moreover, impoundment has been a widely addressed topic, including in the State of Iowa. In so far that it has been addressed in Attorney General Opinions and a Drake Law Review Article written by Justice Appel. Nonetheless, the Defendants in this case attempt to make impoundment appear to be a fictions concept, which is not open to legal interpretation by the courts in Iowa. If such assertion were true, the need for judicial process would be eliminated.

Consequently, when dealing with impoundment, the same standard for preliminary injunction applies. Meaning, the court has an interest in maintaining the status quo between the parties and evaluating the merits of the case which means discretion is left to the court to determine whether the requested preliminary injunction is appropriate. *See Lewis Investments*, 703 N.W.2d 180 (Iowa 2005).

Ultimately, the discretion of the court to evaluate the appropriateness of a preliminary injunction coupled with the undeniable recognition of the concept of impoundment makes it clear that the District Court in no way abused their discretion when granting a temporary injunction in this matter. Thus, review of such would exceed the discretion of the Supreme Court.

II. As determined by the District Court, the Plaintiffs in this matter have standing.

In the case at hand, the Plaintiffs have standing not only through being citizens, residents and taxpayers of the State of Iowa but also through their individual roles representing the state as legislators and representing AFSCME Iowa 61 Council as President.

First of all, in relation to taxpayers, citizens and residents standing, the state courts are not bound to the same stringent requirements for standing set forth in the federal court. 59 Am. Jur. 2d (1987). Further, Iowa has focused on the concept of cognizable injury meaning the plaintiff has a sufficient stake in a case if he is "among those who have sustained it." *ICLU v. Critelli*, 244 N.W.2d 564, 567 (Iowa 1976). Therefore, based on the foregoing, it is clear that simply as residents and taxpayers, all four plaintiffs in this matter have sufficient standing. However, standing is even stronger when standing for each plaintiff is viewed in relation to their individual roles.

Next, as legislators, Steven Soddors, Jack Hatch, Pat Murphy and Mark Smith have standing. As specifically set forth in *Cesar v. Miller*, legislators have a "pain, direct and adequate interest in maintaining the effectiveness of their votes." In the case at hand, the Iowa Juvenile Home was appropriated funds directly for its continued operation under Senate File 446, Section 17. Likewise, its operation is addressed in Iowa Code Section 233A.1. Therefore, by closing the Toledo facility, the legislative intent pertaining to the operation of the Toledo Facility has been materially frustrated. Ultimately, amounting to a violation of Article IV, Section 9 of the Iowa Constitution since the Defendant Governor has failed to faithfully execute the laws of the state. It is hard to imagine anyone with better standing to contest the Constitutionality of the Governor's effective nullification of a legislative action than the very legislators who voted for

and successfully passed the legislation in question. Based on such, the legislators involved in this action have been injured by the Defendants, resulting in proper standing in this case.

Finally, Danny Homan has standing through AFSCME Iowa Council 61. After all, an association has the standing to seek an injunction or declaration on behalf of its injured members. *Warth v. Seldin*, 422 U.S. 490, 515, 95 S.Ct. 2197, 2213 (1975). Specifically, Danny is the President of AFSCME Iowa Council 61, the union who represents the interest of the employees whose employment was terminated due to the closing of the Toledo Facility. It is undeniable that employees who have been laid off have suffered an injury, thus giving rise to Mr. Homan's standing in this case. Consequently, the Defendants contention that this matter is one that needs to be overcome through the grievance process is also invalidated because Mr. Homan's standing in this matter reiterates that the case at hand is constitutional in nature rather than contractual.

III. The preliminary injunction was granted based on the appropriate petition.

The Petition in this matter was both verified and articulated—contrary to the claims of the Defendants. First of all, Iowa Rule of Civil Procedure 1.1502 pertains to preliminary injunctions, requiring a petition to be supported by an affidavit. However, Iowa Court Rule 1.413 further expands on the affidavit requirement stating that in order for a preliminary injunction to be appropriate, the district court must have before it some evidence, which can be an affidavit or sworn testimony or their equivalent. Thus allowing the merits of the case and the pleading itself qualify as sufficient evidence to grant a preliminary injunction.

As set forth in the *Kleman* case, the broader requirement of “or their equivalent” allows the court to consider evidence other than affidavits when analyzing the circumstances of the parties in order to balance the harm that a temporary injunction may prevent against the harm

that may result from its issuance. 373 N.W.2d 90, 96 (Iowa 1985); see O. Fiss & D. Rendleman, Injunctions 343-44 (2d ed. 1984) (suggesting factors to be considered by court in exercising its discretion to grant or deny a temporary injunction).

Furthermore, the Plaintiffs in this case were granted a preliminary injunction by the District Court. As further provided by the *Kleman* case, “affidavits **may** be considered in determining whether a temporary injunction may be allowed”—thus demonstrating how rules of evidence are applied in a more lenient manner to an application for temporary injunction than for a permanent injunction. See *id.* at 95; citing Iowa R.Civ.P. 321.

Likewise, the preliminary injunction was granted based on the appropriate petition. As asserted by the Defendants in this matter, a petition must be verified. Once again, this requirement is met through Iowa Rule of Civil Procedure 1.431(1), stating;

...Counsel’s signature to every motion, pleading, or other paper shall be deemed a certificate that: counsel has read the motion, pleading or other paper; that to the best of counsel’s knowledge, information, and belief, formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law or a good faith argument...

Therefore, the Petition in this matter clearly qualifies as “verified” in accordance with the Iowa Rules of Civil Procedure. Likewise, the Defendants claim that the Petition was unverified is further overcome through the affidavit of Danny Homan which was included in the January 10, 2014 filing by the Plaintiffs.

Furthermore, in regards to the claim that the preliminary injunction is based on an unarticulated petition, the Plaintiffs have demonstrated that their case succeeds solely based on the merits of the case. First of all, irreparable harm has been demonstrated to the youth served

by the Toledo Facility. Despite the fact that the Defendants have claimed that the District Court does not have jurisdiction because it is exclusive to the juvenile courts is incorrect. While the juvenile courts have jurisdiction exclusively to adjudicate a child as having committed a delinquent act or determining disposition for children in need of assistance, that is not the issue at hand here. Therefore, based on the fact that irreparable harm to the youth has occurred due to constitutional violations, the harm must be remedied by resolving the constitutional violations. Likewise, the employees of the Toledo Facility have suffered irreparable harm, demonstrating that the losses suffered are neither temporary nor solely economic.

Consequently, the Petition filed by the Plaintiffs in this matter is sufficient grounds for a preliminary injunction. After all, the Petition complied with all applicable Iowa law, was verified and the merits of the claim undeniably show that irreparable harm was suffered by both the misplaced youth served by the facility and the employees who were laid off due to its closing.

IV. The District Court did not abuse its discretion in granting a preliminary injunction against public officials.

The District Court appropriately acted within its discretion when it granted a preliminary injunction against the public official defendants in this case. As set forth by the Defendants, “preliminary restraint against public officers should not be ordered unless on the pressure of urgent necessity, and ordinarily a temporary injunction against public officers will be refused where plaintiff’s right to an injunction is doubtful or is based on facts determinable only by trial.”

However, in the case at hand, the Plaintiffs clearly demonstrated the necessity of a preliminary injunction. As Governor of the State of Iowa, Terry Branstad has a constitutional duty to faithfully execute all law of the state of Iowa. This includes compliance with Iowa Code Section

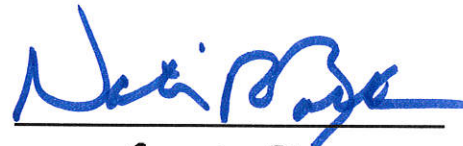
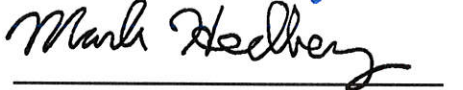
233A.1 which calls for the operation of the Toledo Facility and Senate File 446 Section 17 which appropriates funds to its operation. Nowhere is there a requirement that every last penny appropriated to the operation of the Toledo Facility be spent. Rather, the issue stems from the Defendants blatant disregard to the existence of such legislation to further his own prerogative. In no way can this be deemed faithfully executing the laws of the state. After all, making legally appropriated funds totally unavailable for their intended purpose ensures that the funds will eventually make their way back to the general fund—ultimately being used for a different purpose than intended and constituting a misappropriation. In other words, the Defendant Governor in this matter abused his executive powers. After all, Defendant Governor freely signed the Senate File 446, appropriating \$8,859,355 to the operation of the Toledo Facility. Meaning that the Defendant Governor was free to veto the bill, yet allowed for its continued operation. Therefore, when the Defendant Governor later decided that the facility should no longer operate, he clearly violated his duty to take care that the laws of the state are faithfully executed.

V. Conclusion

As clearly demonstrated above, the Plaintiffs in this case have standing and have satisfied the requirements for both their Petition for Declaratory Relief, Injunctive Relief and a Writ of Mandamus and for their Application for Preliminary Injunction in this matter. Further, the Plaintiffs have also successfully stated a claim upon which relief can be granted. More importantly, when analyzing all the merits of the case, the District Court acted within their discretion when granting a preliminary injunction in this case. Consequently, review of the preliminary injunction granted in this case is not appropriate for the Supreme Court of Iowa.

WHEREFORE, the Plaintiffs respectfully request that the Defendants' Application for Appeal in Advance of Final Judgment be denied based upon the foregoing reasons as addressed above.

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CERTIFICATE OF SERVICE	
The undersigned certifies that the foregoing instrument was served upon each of the attorneys of record of all parties to the above-entitled cause herein at their respective addresses disclosed on the pleadings of record on the <u>14th</u> day of February, 2014.	
By:	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> FAX <input type="checkbox"/> Certified Mail <input type="checkbox"/> Courier <input type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> Other: <u>email</u>
Signature:	<u>Nathaniel R. Boulton</u>