

**United States District Court  
District of Minnesota  
Fourth Division**

Kevin Scott Karsjens, David Leroy Gamble,  
Jr., Kevin John DeVillion, Peter Gerard  
Loneragan, James Matthew Noyer, Sr.,  
James John Rud, Dennis Richard Steiner,  
James Allen Barber, Craig Allen Bolte,  
Kaine Joseph Braun, Brian Keith Hausfield,  
Christopher John Thuringer, Kenneth S.  
Daywitt, Bradley Wayne Foster,  
**Plaintiffs,**

vs.

Minnesota Department of Health & Human  
Services, Minnesota Sex Offender Program,  
Lucinda Jesson, Dennis Benson, Tom  
Lundquist, Jim Berg, Kevin Moser, Ann  
Zimmerman, Laurie Severson, Greg  
Carlson, Elizabeth Barbo, Mehadad  
Sabestari, Terry Kneisel, Scott Benoit, Erik  
Skon, Susan Johnson, Jean Seykora, John  
Doe and Jane Doe, whose true names are  
unknown),

**Defendants.**

CASE NO: \_\_\_\_\_

**MEMORANDUM OF LAW IN  
SUPPORT OF APPLICATION FOR  
TEMPORARY RESTRAINING  
ORDER/PRELIMINARY  
INJUNCTION**

---

A court may grant a temporary restraining order or a preliminary injunction if the moving party demonstrates "that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest."<sup>2</sup>

---

<sup>2</sup> Winter v. Natural Res. Def. Council, Inc., 129 S. Ct. 365, 374, (2008); also see Dataphase Systems, Inc. v. CL Systems, Inc., 640 F.2d 109, 115 (8th Cir. 1981)

SCANNED

DEC 21 2011

U.S. DISTRICT COURT ST. PAUL

JGC

An injunction is an extraordinary remedy that is not routinely granted and generally reserved for when the right to relief is clear.<sup>3</sup> In determining whether to issue such injunctive relief, the Court considers the following factors:<sup>4</sup> (1) the threat of irreparable harm to plaintiffs; (2) the state of the balance between this harm and the injury that granting the injunction will inflict on the defendants; (3) the probability of plaintiffs' success on the merits; and (4) the public interest.<sup>5</sup> No single factor is determinative. The Court also considers the probability of the Plaintiffs' success in the context of the relative injuries to the Plaintiffs, Defendants, and the public.<sup>6</sup>

(1) Plaintiffs are harmed irreparably every day that the Defendant's version of the Minnesota Sex Offender Program<sup>7</sup> is allowed to exist in an ordered society. Every single immediate Plaintiff is participating in treatment willfully. Plaintiff's deserve to receive treatment which would render further supervision unnecessary. Plaintiffs are not receiving this type of individualized care.

It is a fact that patients at the MSOP are subjected to threats by the Defendants.<sup>8</sup> These threats include, but are not limited to: the threat of receiving unfavorable treatment reports, being moved or transferred to a different living unit, the threat of unwarranted

---

<sup>3</sup> *Weinberger v. Romero-Barcelo*, 456 U.S. 305, 312, 102 S. Ct. 1798, 72 L. Ed. 2d 91 (1982); *Ferry-Morse Seed Co. v. Food Corn, Inc.*, 729 F.2d 589, 593 (8th Cir. 1984).

<sup>4</sup> *Id* Dataphase Systems at 113.

<sup>5</sup> *Winter v. Natural Resources Defense Council, Inc.*, 129 S. Ct. 365, 374, 172 L. Ed. 2d 249 (2008); *Oglala Sioux Tribe v. C&W Enterprises, Inc.*, 2009 U.S. Dist. LEXIS 25881, 3 (D.S.D. March 25, 2009)(applying Dataphase factors to TRO motion consideration).

<sup>6</sup> *Id* Dataphase Systems, at 113.

<sup>7</sup> Hereinafter "MSOP."

<sup>8</sup> See Plaintiffs Exhibits No.'s *Karsjens Exhibit A & Gamble Exhibit B* attached hereto.

searches to confiscate legal materials, and the threat of being returned to the Department of Corrections if the Patient is on Supervised/Intensive Supervised Release etc...

Making Plaintiff's choose between clothing, books, and other personal property and their legal material's violates due process by punishing those who choose to litigate against the Defendants. "Allowing Plaintiff to keep such documentation in his possession should not cause Defendants any significant harm, as the storage locker provided [] should be sufficient to hold copies of the pleadings and exhibits for all of Plaintiff's active cases."<sup>9</sup>

All Plaintiffs will suffer irreparable harm if Defendant[s] are allowed to act against same in a manner, which would disrupt the inpatient comprehensive treatment program they are currently committed to, by Minnesota Court, Probate Division Order: and are actively participating in the treatment.

(2) Because there was no serious threat to the Defendant's before the implementation of the violations complained of, and because the Defendants have the Minnesota State Rules, governing the housing and treatment of other mentally ill & dangerous citizens' is already in place in Minnesota, there is no, or minimal safety risk to the Defendants in this case. Therefore, any risk of possible harm or costs to Defendants is non-existent or negligible.

---

<sup>9</sup> Williams v. Stewart, 2010 U.S. Dist. LEXIS 101875.

(3) The chance that Plaintiffs will succeed on the merits is great. Defendants have made such drastic and draconian changes to the MSOP since 2008 that there is no longer any doubt that the MSOP violates nearly every aspect of the due process clause as well as many other facets of federal law. The evidence is overwhelming that it exists for no purpose other than the preventative detention of civilly committed sex offenders. The State of Minnesota Legislative Auditor agrees with this assessment<sup>10</sup>

(4) It is the Plaintiffs' belief that it is always in the public's best interest to have government employees whom adhere to the Constitutional principles of the United States of America.

Plaintiffs have the burden of showing that preliminary relief should be granted.<sup>11</sup> Because Plaintiffs seek to enjoin the enforcement of state statutes, they must "demonstrate more than just a 'fair chance' that they will succeed on the merits."<sup>12</sup> Instead, Plaintiffs must meet a more rigorous standard, demonstrating that they are "likely to prevail on the merits."<sup>13</sup> This more "rigorous standard 'reflects the idea that governmental policies implemented through legislation or regulations developed through presumptively reasoned democratic processes are entitled to a higher degree of deference and should not be enjoined lightly.'<sup>14</sup>" The Eighth Circuit has stated that "[b]y re-

---

<sup>10</sup> See Plaintiff's Exhibits 1&2 submitted with the Complaint.

<sup>11</sup> Carlson, et;al., v. Wiggins, et; al., 760 F. Supp. 2d 811 (IA Dist. 2011); see also Baker Elec. Coop., Inc. v. Chaske, 28 F.3d 1466, 1472 (8th Cir. 1994) (citing Modern Computer Sys., Inc. v. Modern Banking Sys., Inc., 871 F.2d 734, 737 (8th Cir. 1989) (en banc)).

<sup>12</sup> Id, see also Planned Parenthood of Minn. v. Rounds, 530 F.3d 724, 731-32 (8th Cir. 2008) (en banc).

<sup>13</sup> Id. at 732 (quoting Doran v. Salem Inn, Inc., 422 U.S. 922, 931, 95 S. Ct. 2561, 45 L. Ed. 2d 648 (1975)).


<sup>14</sup> Id. (quoting Able v. United States, 44 F.3d 128, 131 (2d Cir. 1995)).

emphasizing this more rigorous standard for demonstrating a likelihood of success on the merits in these cases, we hope to ensure that preliminary injunctions that thwart a state's presumptively reasonable democratic processes are pronounced only after an appropriately deferential analysis.<sup>15</sup> The Court has no doubt that this exhortation to apply "an appropriately deferential analysis" applies with at least equal-if not greater-force where, as here, Plaintiffs seek to enjoin enforcement of not just a state statute, but a provision of a state constitution.

Since Mr. Benson has come to the MSOP, he has implemented more than 319 policies; most of which restrict the Plaintiff's civil rights. There is not one single policy left from before the period of time defendant Benson's hire. Many, if not all of these new policies were adopted from the Minnesota Department of Corrections.<sup>16</sup> Plaintiff can prove at hearing/trial, the MSOP is nothing more than a civil prison/preventative detention designed to punish the patients which reside within it's razor-wire fences.

Plaintiff's have made a prima facie showing by advancing ample evidence through sworn affidavit and physical evidence to warrant GRANT of TRO/Preliminary Injunction

Dated: December 15, 2011

  
Kevin Karsjens on behalf of  
Plaintiffs Pro se

---

<sup>15</sup> Id. at 733.

<sup>16</sup> See Plaintiff Lonergan's Exhibit C attached hereto; and Exhibit 3 submitted with the filed Complaint.