

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NORTH DAKOTA  
SOUTHWESTERN DIVISION

<b>Gary Emineth,</b>	)	
	)	
<b>PLAINTIFF,</b>	)	<b>Judge</b>
	)	
<b>v.</b>	)	<b>Civil No. 1:12-CV-139</b>
	)	
<b>Alvin Jaeger, Secretary of State of</b>	)	
<b>North Dakota, in his official capacity;</b>	)	
<b>Wayne Stenehjem, Attorney General of</b>	)	
<b>North Dakota, in his official capacity;</b>	)	
<b>Richard J. Riha, Burleigh County</b>	)	
<b>State’s Attorney, in his official capacity</b>	)	
	)	
<b>DEFENDANTS.</b>	)	

**PLAINTIFF’S MOTION FOR PRELIMINARY INJUNCTION**

Plaintiff Gary Emineth respectfully moves this Court for a preliminary injunction against enforcement of N.D. CENT. CODE § 16.1-10-06. On October 16, 2012, Mr. Emineth filed a motion in this Court to permanently enjoin enforcement of N.D. CENT. CODE § 16.1-10-06, and contemporaneously filed a Memorandum of Law in support of that Motion. Plaintiff incorporates that Memorandum of Law by reference, and reasserts the points and authorities therein in support of this Motion for Preliminary Injunction.

As set forth in the Memorandum of Law in Support of Plaintiff’s Motion for Permanent Injunction, N.D. CENT. CODE § 16.1-10-06 constitutes an

unconstitutional prior restraint on protected speech, which satisfies the test for a permanent injunction. In the Eighth Circuit, “[t]he standard for a permanent injunction is virtually the same as that for a preliminary injunction. The only substantive difference is that the moving party must show actual -- as opposed to a probability of -- success on the merits.” *Entertainment Software Association v. Hatch*, 443 F. Supp. 2d 1065, 1068 (D. Minn. 2006) (citing *Bank One v. Guttan*, 190 F.3d 844, 847 (8th Cir. 1999)). Since Plaintiff has already shown actual success on the merits in his Memorandum of Law in Support of Motion for Permanent Injunction, he has necessarily also demonstrated the somewhat less-demanding “probability of success on the merits” required in the preliminary injunction context. Thus, a preliminary injunction is an appropriate remedy.

WHEREFORE, Plaintiff requests that this motion be expeditiously granted, and that enforcement of N.D. CENT. CODE § 16.1-10-06 be preliminarily enjoined in advance of November 6, 2012.

Dated this 25<sup>th</sup> day of October, 2012.

Respectfully submitted,

/s/ Allen Dickerson

Allen Dickerson\*

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## CERTIFICATE OF SERVICE

I hereby certify that on the 25<sup>th</sup> day of October, 2012:

I caused a copy of the foregoing Motion for Preliminary Injunction to be filed electronically using the ECF system.

Pursuant to a telephonic discussion with counsel for defendants Jaeger and Steneham, I have caused a true and correct copy of the foregoing Motion to be delivered via electronic mail to Douglas A. Bahr, Solicitor General of North Dakota, at dbahr@nd.gov.

I caused a true and correct copy of the foregoing Motion to be mailed via First Class Mail to:

Randall J. Bakke, Esq.  
Smith, Bakke, Porsborg, Schweigert & Armstrong  
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Bismark, North Dakota 58502-0460  
*Attorneys for Defendant Richard J. Riha.*

/s/ Allen Dickerson  
*Counsel for Plaintiff*