IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

LIBERTARIAN PARTY OF SOUTH DAKOTA, et al.,	)	
Plaintiffs,	)	
v.	)	Civ. No. 15-4111-KES
SHANTEL KREBS, et al.,	)	
Defendants.	)	

PLAINTIFFS' BRIEF IN SUPPORT OF MOTION FOR RECONSIDERATION

Plaintiffs move the Court to reconsider its Memorandum Opinion and Order Denying Plaintiffs' Motion for Permanent Injunction (Doc. 68). A motion for reconsideration may be granted "to correct manifest errors of law." *Hagerman v. Yukon Energy Corp.*, 839 F.2d 407, 414 (8th Cir. 1988). Here, Plaintiffs' motion for reconsideration should be granted to correct three fundamental legal errors: (1) the denial of the Motion for Permanent Injunction is contrary to this Court's prior orders; (2) the Federal Rules of Civil Procedure require the Court to grant the relief to which Plaintiffs are entitled; and (3) the Court has a duty to remedy violations of federal rights, which can only be achieved in this case by granting Plaintiffs' Motion for Permanent Injunction compelling the Secretary of State to list Plaintiffs' candidates for U.S. Senate and state House of Representatives on the November ballot.

I. Prior Pleading and Ruling by this Court on the Disparate Treatment Issue Require Reconsideration.

The Court denied Plaintiffs' Motion for Permanent Injunction because it "finds that

plaintiffs' motion for a permanent injunction compelling the Secretary of State to place the names of a United States Senate candidate and a state House of Representative candidate on the November ballot lies outside of the issues raised in the amended complaint." Doc. 68 at 4. However, as the Court noted in its prior Memorandum Opinion And Order Denying Defendants' Motion for Summary Judgment, Doc. 43 at 14: "Plaintiffs argue it is 'irrational,' 'discriminatory.' and 'unreasonable' for South Dakota to treat candidates running for the SDCL 12-5-21 offices differently from all other candidates. Docket 33 at 3, 20-22." Not only did Plaintiffs raise this issue in their Brief In Opposition to Defendants' Motion for Summary Judgment, Doc. 33, but this Court addressed and discussed the issue in detail in its order denying Defendants' motion for summary judgment. Doc. 43 at 13-6. As the Court concluded: "Although South Dakota has an important regulatory interest in ensuring its elections are fair and efficient, defendants have advanced no reason why primary elections are necessary for some candidates but not others. Because defendants have not given any reason for the disparate treatment, summary judgment is denied." *Id.* at 15-6. Thus, the issue of disparate treatment of candidates was in fact raised by Plaintiffs in their pleadings and was addressed by this Court in its prior order. Plaintiffs submit that this prior discussion and ruling by the Court on the disparate treatment issue requires the Court to reconsider its Memorandum Opinion and Order Denying Plaintiffs' Motion for Permanent Injunction (Doc. 68).

II. The Federal Rules of Civil Procedure Require Reconsideration.

In addition to the prior discussion of the disparate treatment issue and this Court's ruling on that issue, the Federal Rules of Civil Procedure require the Court to reconsider its Memorandum Opinion and Order Denying Plaintiffs' Motion for Permanent Injunction

(Doc. 68). Rule 8(a)(2) of the Federal Rules of Civil Procedure provides that a complaint must identify the basis of jurisdiction and contain "a short and plain statement of the claim showing that the pleader is entitled to relief." As the court noted in *Bartholet v. Reishauer A.G. (Zurich)*, 953 F.2d 1073, 1078 (7th Cir. 1992): "Although it is common to draft complaints with multiple counts, each of which specifies a single statute or legal rule, nothing in the Rules of Civil Procedure requires this. To the contrary, the rules discourage it. Complaints should be short and simple, giving the adversary notice while leaving the rest to further documents." In addition, and more importantly, Rule 54(c), Fed. R. Civ. P., provides that the district court "should grant the relief to which each party is entitled, even if the party has not demanded that relief in its pleadings." In *Whole Woman's Health v. Hellerstedt*, 136 S. Ct. 2292, 2307 (2016), the Court, citing Rule 54(c), observed that "[t]he Federal Rules of Civil Procedure state that (with an exception not relevant here) a 'final judgment should grant the relief to which each party is entitled, even if the party has not demanded that relief in its pleadings.'" The Court accordingly sustained an injunction awarding facial relief against Texas's abortion law even though it had not been sought.[1] The Court reached a similar conclusion in *Metro-North Commuter Railroad Co. v. Buckley*, 521 U.S. 424, 455 (1977), stating that under Rule 54(c), "a party should experience little difficulty in securing a remedy other than that demanded in his pleadings when he shows he is entitled to it." *Accord Holt Civic Club v. City of Tuscaloosa*, 439 U.S. 60, 66 (1978) ("[A]lthough the prayer for relief may be looked to for illumination when there is doubt as to the substantive theory under which a plaintiff is proceeding, its omissions are not in and of

[1] In their Amended Complaint Plaintiffs did seek "any further relief which may in the discretion of this Court be necessary and proper." Doc. 12-1 at 9.

themselves a barrier to redress of a meritorious claim."); *Citizens United v. Federal Election Comm'n*, 558 U.S. 310, 333 (2010) (in "the exercise of its judicial responsibility" it may be "necessary ... for the Court to consider the facial validity" of a statute, even though a facial challenge was not brought). As is clear from Rule 54(c) and the decisions of the Supreme Court, nothing bars this Court from granting Plaintiffs' motion for a permanent injunction compelling the Secretary of State to place the names of a United States Senate candidate and a state House of Representative candidate on the November ballot. Indeed, Rule 54(c) and the cited cases demonstrate Plaintiffs are entitled to a permanent injunction. *See Whole Woman's Health*, 136 S. Ct. at 2307 ("[I]f the arguments and evidence show that a statutory provision is unconstitutional on its face, an injunction prohibiting its enforcement is 'proper.'").

III. Federal Courts Have a Duty to Remedy Violations of Federal Rights.

Since the earliest days of our Republic it has been clear that when federal rights are violated, it is the province and duty of the federal courts to issue an effective remedy. *See Marbury v. Madison*, 1 Cranch 137 (1803). As the Supreme Court confirmed more than 50 years ago, "where federally protected rights have been invaded, it has been the rule from the beginning that courts will be alert to adjust their remedies so as to grant the necessary relief. And it is also well settled that where legal rights have been invaded, and a federal statute provides for a general right to sue for invasion, federal courts may use any available remedy to make good the wrong done." *Bell v. Hood*, 327 U.S. 678, 684 (1946) (citations omitted). *See also Hutto v. Finney*, 437 U.S. 678, 688 (1987) (a remedial order must cure "each element contributing to the violation" of federal law); *Milliken v. Bradley*, 418 U.S. 717, 744 (1974) ("Once a constitutional violation is found, a federal court is required to tailor the scope of the remedy to fit the nature

and extent of the constitutional violation"); *Sullivan v. Little Hunting Park, Inc.*, 396 U.S. 229, 239 (1969) ("all necessary and appropriate remedies" are available to a federal court to remedy a constitutional violation). Moreover, when a constitutional violation is presently occurring, as here, a district court should enter an order "to bring [the] ongoing violation to an immediate halt." *Hutto*, 437 U.S. at 687 n. 9. *See generally Franklin v. Gwinnett Cnty. Pub. Schs.*, 503 U.S. 60, 66 (1992) (citing *Marbury*, 1 Cranch at 163, for the principle that a federal court must effectively remedy each violation of federal law).

The Eighth Circuit has consistently enforced these principles. A district court's duty to effectively remedy a violation of federal law "has deep roots in our jurisprudence." *Rodgers v. Magnet Cove Pub. Schs.*, 34 F.3d 642, 644 (8th Cir 1994) (citing *Franklin*, 503 U.S. at 66). As the court explained in *Miener v. State of Mo.*, 673 F.2d 969, 977 (8th Cir. 1982):

> The starting point for our analysis is the principle enunciated by the Supreme Court in *Bell v. Hood*, 327 U.S. 678, 684, 66 S. Ct. 773, 776, 90 L.Ed. 939 (1946), that where legal rights are invaded and a federal statute provides a right to sue for such invasion, federal courts may use any available remedy to make good the wrong. The existence of a statutory right implies the existence of all necessary and appropriate remedies. *Sulllivan v. Little Hunting Park, Inc.*, 396 U.S. 229, 239, 90 S. Ct. 400, 405, 24 L.Ed. 386 (1969).

See also Maschka v. Genuine Parts Co., 122 F.3d 566, 572-73 (8th Cir. 1997) (holding that a district court must provide the victim of a civil rights violation with "the most complete relief possible") (internal citation omitted); *Little Rock Sch. Dist. v. Pulaski Cnty. Special Sch. Dist. No. 1*, 778 F.2d 404, 433 (8th Cir. 1985) ("Having found [violations of federal law by state and local officials], the district court was responsible for devising a remedy that would correct the constitutional violations that it found."); *Brewer v. Hoxie Sch. Dist. No. 46 of Lawrence Cnty., Ark.*, 238 F.2d 91, 98 (8th Cir. 1956) (similar, citing *Bell v. Hood*). As the applicable cases

provide, when federal rights are violated it is the province and duty of a federal court to issue an effective remedy.

Conclusion

Plaintiffs, for the reasons set out above, request that their Motion for Reconsideration be granted.

This 17th day of August 2016.

Respectfully submitted,

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