

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF ARKANSAS**

AMERICAN ATHEISTS, INC.;
BETTY JO FERNAU;
CATHERINE SHOSHONE;
ROBERT BARRINGER; and
KAREN DEMPSEY,

Plaintiffs,

v.

Case No. 4:19cv17-KGB

STANLEY JASON RAPERT,
in his individual and official capacity,

Defendant.

**PLAINTIFFS' MOTION FOR TEMPORARY RESTRAINING
ORDER AND PRELIMINARY INJUNCTION
AND REQUEST FOR EXPEDITED HEARING**

Plaintiffs, for their Motion for Temporary Restraining Order and Preliminary Injunction and Request for Expedited Hearing, state:

1. Plaintiffs seek injunctive and declaratory relief under 42 U.S.C. §§ 1983 and 1988 and ARK. CODE ANN. § 16-123-105(a) against defendant Stanley Jason Rapert for his unlawful and unconstitutional restriction of the participation of individuals critical of his statements and policy positions in public forums on social media sites such as Facebook and Twitter. This practice constitutes viewpoint discrimination in violation of the Constitutions of the United States and the State of Arkansas and violates other constitutional protections and the Arkansas Religious Freedom Restoration Act. *See, e.g., Davison v. Randall*, ___ F.3d ___, Case No. 17-2002, 2003 (4th Cir. 2019) (affirming district court holding that chair

of county board violated citizen's First Amendment rights by banning him from her Facebook page for about 12 hours); *Knight First Amend. Inst. at Columbia Univ. v. Trump*, 302 F.Supp.3d 541 (S.D.N.Y. 2018) (President's actions in barring access of users to his Twitter account were the result of viewpoint discrimination in violation of First Amendment free speech clause.)

2. Under Federal Rule of Civil Procedure 65, plaintiffs seek a temporary restraining order ("TRO"), an expedited hearing, and a preliminary injunction enjoining Senator Rapert from: (1) restricting plaintiffs' and other users' ability to interact with Senator Rapert's @jasonrapert Twitter account and "Sen. Jason Rapert" Facebook page based on their political and/or religious viewpoints and (2) using the @jasonrapert Twitter account and "Sen. Jason Rapert" Facebook page to disparage any particular beliefs about religion, discriminate against users on the basis of their beliefs about religion, and single users out for opprobrium and derision on the basis of their beliefs about religion.

3. Plaintiffs request that the Court immediately issue a TRO so that plaintiffs and other Facebook and Twitter users, including Senator Rapert's constituents, are not unconstitutionally blocked from full participation in matters before the 92nd Arkansas General Assembly, which convenes on January 14, 2019.

4. "The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Elrod v. Burns*, 427 U.S. 347,

373 (1976). Plaintiffs already have suffered irreparable injury due to the actions of Senator Rapert and denial of their request for a TRO would compound that harm.

5. A TRO will not cause harm or prejudice to Senator Rapert.

6. Plaintiffs also request that, following the issuance of a TRO, the Court convene a hearing on their request for a preliminary injunction, which is necessary to protect their constitutional and statutory rights during the pendency of this case.

7. Because a preliminary injunction is necessary to preserve Plaintiffs' constitutional rights, this Court should waive the bond requirement of Fed. R. Civ. P. 65. *See, e.g., Ogden v. Marendt*, 264 F. Supp. 2d 785, 795 (S.D. Ind. 2003); *Westfield High Sch. L.I.F.E. Club v. City of Westfield*, 249 F. Supp. 2d 98, 129 (D. Mass. 2003); *Smith v. Bd. of Election Comm'rs.*, 591 F. Supp. 70, 71 (N.D. Ill. 1984).

8. Based on the facts and the law, Plaintiffs' likelihood of success on the merits is strong.

- a. Senator Rapert is a state actor under 42 U.S.C. § 1983 and ARK. CODE ANN. § 16-123-105(a) because he is an active member of the Arkansas State Senate and operates the Facebook and Twitter accounts in question in his official capacity and as a means of communication with and among his constituents and others.

b. Senator Rapert is violating Plaintiffs' constitutional and statutory rights by blocking them from participation in his Facebook and Twitter pages, which are constitutionally protected public forums.

9. The balance of equities weighs strongly in favor of Plaintiffs because they stand to suffer great and continuing harm if the Court denies this Preliminary Injunction and Senator Rapert cannot show any harm if this Court grants Plaintiffs' Motion. Justice requires the Court to intervene to preserve Plaintiffs' constitutional and statutory rights pending resolution of the merits of this case.

10. The public interest is served by granting Plaintiffs' motion for preliminary injunction. It is always in the public interest to protect constitutional rights, *Phelps-Roper v. Nixon*, 545 F.3d 685, 690 (8th Cir. 2008).

11. The accompanying brief in support of Plaintiffs' motion for preliminary injunction is incorporated by reference herein.

WHEREFORE, and for all reasons appearing in the record, Plaintiffs respectfully request that this Court issue its order:

a. enjoining Senator Rapert from restricting Plaintiffs' and other users' ability to interact with his @jasonrapert Twitter account and "Sen. Jason Rapert" Facebook page based on their political and/or religious viewpoints;

b. enjoining Senator Rapert from using the @jasonrapert Twitter account and “Sen. Jason Rapert” Facebook page to disparage any particular beliefs about religion, discriminate against users on the basis of their beliefs about religion, and/or single users out for opprobrium and derision on the basis of their beliefs about religion;

c. requiring Senator Rapert to maintain records documenting the basis for any future decision to restrict a Facebook or Twitter user’s ability to interact with his official social media accounts and therein engage in public speech;

d. establishing an expedited briefing period and hearing on this matter; and

e. granting all other just and proper relief.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on January 9, 2019, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system and have served the Defendant in his official and individual capacities through counsel via electronic mail:

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