

**United States Court of Appeals  
FOR THE EIGHTH CIRCUIT**

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No. 98-1625

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|---------------------------------------|---|---|
| Republican Party of Minnesota,        | * |   |
| an association; Indian Asian          | * |   |
| American Republicans of               | * |   |
| Minnesota; Republican Seniors,        | * |   |
| an association; Young Republican      | * |   |
| League of Minnesota, a Minnesota      | * |   |
| nonprofit corporation; Minnesota      | * |   |
| College Republicans, an association,  | * |   |
| Gregory F. Wersal, individually;      | * |   |
| Cheryl L. Wersal, individually;       | * |   |
| Mark E. Wersal, individually;         | * |   |
| Corwin C. Hulbert, individually;      | * |   |
| Campaign for Justice, an association; | * |   |
| Minnesota African American Council,   | * |   |
| an association; Muslim Republicans,   | * |   |
| an association,                       | * | Appeal from the United States             |
|                                       | * | District Court for the                    |
|                                       |   | <a href="#">Minnesota Appeals Federal</a> |
| Appellants,                           |   |   |
|                                       | * | [UNPUBLISHED]                             |
| v.                                    | * |   |

Verna Kelly, in her capacity as \*  
Chairperson of the Minnesota Board \*  
of Judicial Standards, or her successor; \*  
Charles E. Lundberg, in his capacity as \*  
Chair of the Minnesota Lawyers \*  
Professional Responsibility Board, or \*  
his successor; Edward J. Cleary, in his \*  
capacity as Director of the Minnesota \*  
Office of Lawyers Professional \*  
Responsibility, or his successor, \*

Appellees. \*

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The Minnesota State Bar Association, \*  
Amicus on Behalf of Appellee. \*  
Minnesota Civil Liberties Union, \*  
Amicus on Behalf of Appellant. \*

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Submitted: October 19, 1998

Filed: November 2, 1998

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Before McMILLIAN, FAGG and BEAM, Circuit Judges.  
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PER CURIAM.

Gregory F. Wersal, a licensed Minnesota attorney and candidate for the position of Associate Justice of the Minnesota Supreme Court, together with his campaign committee, Campaign for Justice, his wife, Cheryl L. Wersal, his brother, Mark Wersal, one of his supporters, Corwin C. Hulbert, the Minnesota Republican Party (MRP), and associations affiliated with the MRP (collectively plaintiffs), appeal from an order of the United States District Court<sup>1</sup> for the District of Minnesota denying their motion for a temporary restraining order or preliminary injunction in their action against the Chair of the Minnesota Board of Judicial Standards, the Chair of the Minnesota Lawyers Professional Responsibility Board, and the Director of the Office of Lawyers Professional Responsibility. Republican Party of Minnesota v. Kelly, No. 98-831 (D. Minn. Mar. 9, 1998) (memorandum opinion and order). Plaintiffs brought this civil action, and moved for injunctive relief, based upon the assertion that certain provisions of Canon 5 of the Minnesota Judicial Code, as amended on December 23, 1997, violate their rights under the free speech, free association, and equal protection clauses of the United States and Minnesota Constitutions. Jurisdiction was proper in the district court based upon 28 U.S.C. § 1331. Jurisdiction is proper in this court based upon 28 U.S.C. § 1292. Upon careful consideration of the record in the present case and the arguments presented on appeal, we hold that the district court did not abuse its discretion in denying plaintiffs' motion for a temporary restraining order or preliminary injunction under the standard set forth in Dataphase Sys., Inc. v. C. L. Sys., Inc., 640 F.2d 109 (8th Cir. 1981) (en banc). At this stage of the litigation, we express no opinion on the merits of plaintiffs' claims. The order of the district court is affirmed. See 8<sup>th</sup> Cir. R. 47B.

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<sup>1</sup> The Honorable Michael J. Davis, United States District Judge for the District of Minnesota.

BEAM, Circuit Judge, dissenting.

I dissent because the district court should have ordered a preliminary injunction on at least part of the claims asserted.

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT.