

IN THE CIRCUIT COURT OF COLE COUNTY

JOHN T. SUMNERS,)	
)	
Plaintiff,)	
)	
v.)	
)	No. _____
JENNIFER EDWARDS,)	
)	
ERIC R. GREITENS, Governor)	
of the State of Missouri,)	
)	
CHARLES W. SHIELDS,)	
O. VICTOR LENZ,)	
MICHAEL W. JONES,)	
CLAUDIA OÑATE GREIM,)	
EDDY JUSTICE,)	
JOHN D. (DOUG) RUSSELL, and)	
MARVIN (SONNY) JUNGMEYER,)	
Members of the State Board)	
of Education,)	
)	
Defendants.)	

PETITION

This is an action for a declaratory judgment, pursuant to section 527.010, and for injunctive relief, in which plaintiff John T. Sumners seeks a declaration that he is a member of the State Board of Education (State Board) and an injunction ensuring his ability to participate on the State Board as a member, having been duly appointed by governor and not removed.

PARTIES

1. Plaintiff is John T. Sumners, a citizen resident of the 7th Congressional District who was appointed to the State Board by Governor Greitens.

2. Defendant Jennifer Edwards is a person who purports to have been appointed to the State Board to the same seat to which plaintiff Sumners had already been appointed.

3. Defendant Eric R. Greitens is the Governor of Missouri, who appointed and later purported to remove plaintiff Sumners, and who purported to appoint defendant Edwards. He is sued in his official capacity.

4. Defendants Charles W. Shields, O. Victor Lenz, Michael W. Jones, Claudia Oñate Greim, Eddy Justice, John D. (Doug) Russell, and Marvin (Sonny) Jungmeyer are members of the State Board, who have, collectively, asserted authority to decide who among those appointed or purporting to have been appointed to the State Board will be allowed to participate in closed session and to vote as members of the State Board. They are sued in their official capacities.

FACTS

5. As of October 26, 2017, the 7th Congressional District seat on the State Board, previously occupied by Peter Herschend and by Melissa Gelner, was vacant.

6. On October 26, 2017, the general assembly was not in session.

7. On October 26, 2017, Governor Greitens notified the Secretary of State of the appointment of plaintiff Sumners to the State Board to the seat for the 7th Congressional District.

8. On October 26, Governor Greitens notified plaintiff Sumners that the governor had appointed plaintiff Sumners to the State Board.

9. On October 31, 2017, plaintiff Sumners attended the State Board meeting in person, took the oath of office, and fully participated throughout the meeting as a member of the State Board.

10. On November 20, 2017, Scott Turk of the governor's staff told plaintiff Sumners, through voice mail, that Sumners' appointment had been rescinded by Governor Greitens, and that an email to that effect would be forthcoming.

11. On November 20, 2017, Scott Turk sent an email to plaintiff Sumners, stating, in part: "... Governor Greitens has withdrawn your appointment to the Missouri State Board of Education. The withdrawal is effective immediately."

12. With regard to the purported removal of plaintiff Sumners from the State Board, neither Governor Greitens nor Mr. Turk have offered or provided plaintiff Sumners with notice, an opportunity for a hearing, nor with any charge of malfeasance, misfeasance, or nonfeasance by plaintiff Sumners in office as a member of the State Board.

13. On November 21, 2017, plaintiff Sumners appeared at the State Board meeting prepared to participate as a member of the State Board as he had done at the October 31 meeting.

14. At the November 21 State Board meeting, defendant Edwards also appeared, purporting to having replaced plaintiff Sumners on the State Board.

15. At the November 21 State Board meeting, plaintiff Sumners and defendant Edwards were initially permitted to join the State Board's closed session, but plaintiff Sumners was then excluded from the meeting, before any vote on substantive motions, by a majority vote of the State Board members present, while defendant Edwards was permitted to remain and to vote.

COUNT I: DECLARATORY JUDGMENT

16. For this Count, Plaintiff incorporates the allegations of paragraphs 1-15 as if restated herein.

17. On October 26, 2017, Governor Greitens appointed plaintiff Sumners to the 7th Congressional District seat on the State Board.

18. The governor's October 26, 2017, appointment was, pursuant to sections 161.022 and 161.052, RSMo., a temporary appointment of plaintiff Sumners because the appointment was made to a vacancy on the State Board and the appointment was made while the general assembly was not in session.

19. No later than October 31, when plaintiff Sumners took the oath of office, plaintiff Sumners became a member of the State Board pursuant sections 161.022 and 161.052.

20. Absent removal, plaintiff Sumners is and will continue to be a member of the State Board until his term expires pursuant to § 161.052.

21. Because a member of the State Board of Education is not an office subject to impeachment, pursuant to Mo. Const. Art. VII, § 4 the general assembly may determine, by law, the manner and causes for removal of a member of the State Board.

22. The general assembly determined in § 161.022(1) that a member of the State Board may be removed by the governor pursuant to § 161.022,

but only after written notice and hearing, and only for malfeasance, misfeasance, or nonfeasance in office.

23. Section 161.022 applies to all members of the State Board, including a member with a temporary appointment, such as plaintiff Sumners.

24. Because the governor did not give plaintiff Sumners written notice nor a hearing, nor did the governor state charges of malfeasance, misfeasance, or nonfeasance by plaintiff Sumners while in office, plaintiff Sumners has not been removed from the State Board, remains a member of the State Board, and is fully authorized to participate and vote as a member of the State Board until his term ends.

25. Because Plaintiff Sumners has not been removed from the State Board and thus there has been no vacancy to which defendant Edwards could be appointed, defendant Edwards is not a member of the State Board and cannot vote as a member of the State Board.

WHEREFORE plaintiff Sumners seeks a declaratory judgment declaring that he, not defendant Edwards, is a member of the State Board of Education.

COUNT II: INJUNCTIVE RELIEF

26. For this Count, Plaintiff incorporates the allegations of paragraphs 1-25 as if restated herein.

27. The State Board will meet on December 1, 2017, with an announced agenda that includes personnel actions, rulemaking, school district classification, a charter school application, and action on teaching certificates, as well as a “closed session,” the agenda for which has not been made public.

28. As shown by the action of the Board at its November 21, 2017 meeting, absent action by this Court the State Board will permit defendant Jennifer Edwards to participate in Board discussion of and vote on the matters before the State Board, and will bar plaintiff Sumners from participating and voting as a Board member.

29. Some or all of the matters to be taken up by the State Board on December 1 may not be eligible for reconsideration—or the availability, timeliness, or efficacy of reconsideration may be adversely affected or even barred, legally or practically, by circumstances that occur following the State Board vote, such as by actions of individuals, schools, and school districts in reliance on the State Board’s decisions.

30. The State Board may also schedule additional meetings and take votes on other matters within the period covered by the term to which plaintiff Sumners was appointed.

31. Plaintiff Sumners will be irreparably harmed by being barred from participating and voting as a member of the State Board.

32. To allow defendant Edwards to participate and vote is contrary to the public interest because it permits her to exercise authority based on a void act by the governor.

WHEREFORE plaintiff Sumners seeks injunctive relief, including a temporary restraining order and preliminary and permanent injunctions, (1) barring the State Board from permitting defendant Jennifer Edwards to participate and vote as a member of the State Board, and (2) requiring the State Board to permit plaintiff Sumners to participate and vote during the remainder of his term as a member of the State Board.

Respectfully submitted,
TUETH KEENEY COOPER
MOHAN & JACKSTADT, P.C.

By: */s/ James R. Layton*

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