

IN THE CIRCUIT COURT FOR BALTIMORE CITY, MARYLAND

KENNETH D. SCHISLER, INDIVIDUALLY, *
AS CHAIRMAN OF THE PUBLIC *
SERVICE COMMISSION, AND ON *
BEHALF OF THOSE MEMBERS OF *
THE PUBLIC SERVICE COMMISSION *
SIMILARLY SITUATED *
Cooper Point Road *
Bozman, Maryland 21612 *

and *

PUBLIC SERVICE COMMISSION OF *
MARYLAND *
6 St. Paul Street, 16th Floor *
Baltimore, Maryland 21202 *

Plaintiffs *

v. *

STATE OF MARYLAND *
Serve on: *
J. Joseph Curran, Jr., Attorney General *
200 St. Paul Place *
Baltimore, Maryland 21201 *

Defendant *

* * * * *

**VERIFIED COMPLAINT FOR DECLARATORY JUDGMENT AND FOR A
TEMPORARY RESTRAINING ORDER AND PRELIMINARY AND PERMANENT
INJUNCTIVE RELIEF**

Plaintiffs, Kenneth D. Schisler, individually, as the Chairman of the Public Service Commission of Maryland, and on behalf of those members of the Public Service Commission similarly situated, and the Public Service Commission of Maryland, by their attorneys, Andrew Radding, Gregory M. Kline, H. Scott Jones and the law firm of Adelberg, Rudow, Dorf & Hendler, LLC, David R. Thompson, Brynja M. Booth and the law firm of Cowdrey, Thompson

& Karsten, P.C. file this Complaint for Declaratory Judgment, and for a Temporary Restraining Order, and for Preliminary and Permanent Injunctive Relief, and state the following in support thereof.

1. This is an action for a temporary restraining order, and preliminary and permanent injunctive relief, pursuant to Maryland Rules 15-501 through 15-505, as well as a Complaint for Declaratory Judgment pursuant to MD. CODE ANN., COURTS AND JUDICIAL PROCEEDINGS § 3-401, *et seq.*

2. This Court has subject matter jurisdiction pursuant to MD. CODE ANN., COURTS AND JUDICIAL PROCEEDINGS Sections 1-501 and 3-403.

3. This Court has venue pursuant to Section 6-201(a) of the Courts and Judicial Proceedings Article of the Maryland Annotated Code and compulsory venue under Senate Bill 1 Section 19.

4. The State of Maryland carries on its regular business within Baltimore City, maintains various facilities in Baltimore City, and regularly does business in Baltimore City.

5. The Public Service Commission is an independent unit in the Executive Branch of State Government. MD. CODE ANN., PUBLIC UTILITIES § 2-101.

6. Currently, the Public Service Commission is comprised of five commissioners (“Commissioners”), who are appointed by the Governor with the advice and consent of the Senate. MD. CODE ANN., PUBLIC UTILITIES § 2-102(a). The Commissioners serve staggered five year terms, and each Commissioner’s duties are full time. *Id.*

7. Currently, state law provides that the Governor appoints a Chairman from among the Commissioners, with the advice and consent of the Senate. MD. CODE ANN., PUBLIC

UTILITIES § 2-103(a). The Chairman serves a term of five years, and continues to serve until a successor is appointed and qualifies. MD. CODE ANN., PUBLIC UTILITIES § 2-103(b).

8. A Commissioner may only be removed from his or her position by the Governor for misconduct or incompetence in accordance with MD. CODE ANN., STATE GOVERNMENT § 3-307; MD. CODE ANN., PUBLIC UTILITIES § 2-102(f).

9. Article II, § 15 of the Maryland Constitution also vests with the Governor the *exclusive authority* to remove civil officers who receive an appointment from the Executive for a term of years. MD. CODE ANN., CONSTITUTIONS, Constitution of Maryland, Art. II, §15.

10. In July, 2003, Plaintiff Kenneth D. Schisler was appointed by the Governor as Chairman of the Public Service Commission of Maryland, which was confirmed by the Senate. Since that time, Plaintiff Schisler has carried out the terms of his appointment in accordance with Maryland law.

11. The sitting Commissioners, Allen Freifeld, Charles Boutin, Karen Smith, and Harold Williams were duly appointed by the Governor of Maryland and confirmed by the Senate.

12. On June 23, 2006, the Maryland General Assembly passed Senate Bill 1, which is an “emergency bill.” *See* Copy of Senate Bill 1 attached hereto as Exhibit 1.

13. By its clear terms, Sections 12 and 22 of Senate Bill 1 remove the current sitting Commissioners as of June 30, 2006 and provides for their replacement on July 1, 2006. *Exhibit 1*, Section 12. The Bill does not provide the Commissioners with any due process or other notice or opportunity to be heard.

14. Senate Bill 1 purports to be an “emergency bill” which became effective when enacted. MD. CODE ANN., CONSTITUTIONS, Constitution of Maryland, Art. II, § 17(d).

COUNT I

(Declaratory Judgment)

15. Plaintiffs incorporate the allegations of paragraphs 1-14 as if fully set forth herein.

16. Plaintiffs seek a declaration of their rights under Sections 12 and 22 of Senate Bill 1 in accordance with the Maryland Declaratory Judgment Act, Courts and Judicial Proceedings § 3-401, *et seq.*

17. Sections 12 and 22 of Senate Bill 1 violate Article II § 15 of the Maryland Constitution. Under Article II, § 15 of the Constitution, only the Governor can remove duly appointed and confirmed Commissioners.

18. Sections 12 and 22 of Senate Bill 1 also violate Article 24 of the Maryland Declaration of Rights, which prohibits the removal of Commissioners without due process of law. The effect of Sections 12 and 22 of Senate Bill 1 are to remove Plaintiff Schisler and those Commissioners similarly situated, without conforming to the procedures required by Article 24 of the Maryland Declaration of Rights and MD. CODE ANN., STATE GOVERNMENT § 3-307.

19. Sections 12 and 22 of Senate Bill 1 are an *ultra vires* enactment, are inconsistent with the Maryland Constitution and the Maryland Declaration of Rights, and Sections 12 and 22 of Senate Bill 1 are void and without legal force and effect.

20. Sections 12 and 22 of Senate Bill 1 are an unlawful Bill of Attainder and violate Article I, Section 10 of the United States Constitution. The removal of the Commissioners from office before the expiration of their terms constitutes, in effect, a finding of guilt and a form of punishment of the current Commissioners for their past actions (or inaction). Secondly, the legislation at issue is clearly directed at the current Commissioners. Finally, Sections 12 and 22

of Senate Bill 1 would remove the Commissioners from office without any provision of the protections of a judicial trial.

21. There exists a case and controversy between Plaintiffs and the State of Maryland, which is ripe for adjudication.

COUNT II
(Injunctive Relief)

22. Plaintiffs incorporate by reference paragraphs 1-21 as if fully set forth herein.

23. By enacting the legislation in this manner, the General Assembly has abused its power in an unprecedented manner to functionally deny the opportunity for judicial review of an unconstitutional legislative enactment.

24. By enacting Senate Bill 1 as an “emergency measure”, the General Assembly has engineered a process whereby a new Commission and new Commissioners can be empowered before the Plaintiffs can challenge the unconstitutional law in Court without resort to extraordinary remedies.

25. By enacting Sections 12 and 22 of Senate Bill 1, the General Assembly has given the Attorney General the power to appoint the People’s Counsel and, in the event the measure is found to be invalid, to appoint the members of the Commission to serve as at will employees.

26. By this Verified Complaint, Motion for Temporary Restraining Order, etc. and memorandum in support thereof, the Commission respectfully requests that the Court enjoin the implementation and effectiveness of Sections 12 and 22 of Senate Bill 1 pending the outcome of this proceeding.

27. Without the entry of a temporary restraining order, Plaintiffs will suffer immediate, substantial and irreparable harm. If Sections 12 and 22 of Senate Bill 1 take

immediate effect, the Public Service Commission and its Commissioners will not be able to perform their daily functions. Sections 12 and 22 of Senate Bill 1 will remove the incumbent Commissioners without notice and opportunity to be heard, and will leave the legal status of the Commission and the Commissioners in question.

28. As shown in the Plaintiffs' Memorandum in Support of a Temporary Restraining Order and Preliminary Injunction which is incorporated by reference herein, the balance of factors considered in determining whether to grant an injunction demonstrates that the injunction should be granted because i) the Plaintiffs are likely to succeed in the merits; ii) the Plaintiffs will be irreparably harmed if the injunction is not granted; iii) the "balance of convenience" favors the grant of the Plaintiffs' motion and iv) the injunction is in the public interest.

29. Plaintiffs respectfully request that bond be waived pursuant to Md. Rule 15-503(b).

WHEREFORE, Plaintiffs respectfully request that:

A. This Court issue an Order granting Plaintiffs a temporary restraining order restraining and enjoining the Defendant State of Maryland from terminating the terms of the present commissioners and appointing new commissioners as provided for in Sections 12 and 22 of Senate Bill 1;

B. This Court issue a preliminary injunction restraining and enjoining the Defendant from terminating the terms of the present commissioners and appointing new commissioners as provided for in Sections 12 and 22 of Senate Bill 1;

C. The Court issue a permanent injunction restraining and enjoining the Defendant from terminating the terms of the present commissioners and appointing new commissioners as provided for in Sections 12 and 22 of Senate Bill 1;

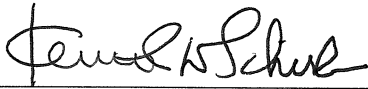
D. The Court declare that Sections 12 and 22 of Senate Bill 1 violate Article 24 of the Maryland Declaration of Rights and Article II, § 15 of the Sections 12 and 22 of Senate Bill 1 are an unlawful Bill of Attainder and violates Article I, Section 10 of the United States Constitution.

E. The Court declare that Sections 12 and 22 of Senate Bill 1 are illegal, *ultra vires* and of no legal force and effect; and


F. That the Plaintiffs be granted costs and such other and further relief as the nature of this case may require.

VERIFICATION

I solemnly affirm under penalties of perjury that the contents of the foregoing Complaint are true to the best of my knowledge, information and belief.



Kenneth D. Schisler, Chairman
Maryland Public Service Commission



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT on this 26th day of June, 2006, a copy of the foregoing Complaint was hand-delivered to J. Joseph Curran, Jr., Office of the Attorney General, 200 St. Paul Place, Baltimore, Maryland 21201.



Andrew Radding