

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

THOMAS ROBB, et al.,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	Case No. 4:01CV1133 CDP
	)	
HENRY HUGERBEELER, et al.,	)	
	)	
Defendants.	)	

**MEMORANDUM AND ORDER**

This matter is before the Court on defendants' motion for a stay pending appeal, and on plaintiffs' motion for attorneys' fees. The parties have stipulated to an appropriate resolution of the attorneys' fees matter, but they disagree about the stay pending appeal.

On September 10, 2003, I granted plaintiffs' motion for summary judgment and enjoined defendants from prohibiting the Ku Klux Klan from participating in Missouri's Adopt-A-Highway program. Defendants are appealing that decision and seek a stay of my decision pending the outcome of their appeal. Defendants argue that there are serious questions regarding the merits of this case and that they could suffer irreparable harm because there is a possibility that the adopt-a-highway program could lose its federal funding if the Klan is permitted to

participate. Plaintiffs contend, however, that defendants are not likely to succeed on the merits and a stay will contribute to the ongoing violation of their First Amendment rights.

The party seeking a stay pending appeal must show: (1) that he is likely to succeed on the merits; (2) that the applicant will suffer irreparable injury absent a stay; (3) that no substantial harm will come to other interested parties; and (4) that the stay will do no harm to the public interest. Hilton v. Braunskill, 481 U.S. 770, 777 (1987); James River Flood Control Ass'n v. Watt, 680 F.2d 543, 544 (8th Cir. 1982). I find that defendants have not met their burden, therefore I will deny their motion to stay pending appeal.

First, defendants cannot show a strong likelihood of success on the merits on appeal. The Eighth Circuit has already ruled that the state cannot deny the Klan access to its Adopt-A-Highway program. Cuffley v. Mickes, 208 F.3d 702 (8th Cir. 2000). Second, Cuffley addressed defendants' argument that they would suffer irreparable harm because the program stands to lose federal funds if the Klan is permitted to participate. The Court noted that "so long as the State does not deny anyone an opportunity to adopt a highway on an improper basis, the State does not violate Title VI [of the Civil Rights Act of 1964]," and therefore it will not lose federal funding. Id. at 709.

Furthermore, plaintiffs will suffer harm if the stay is granted because Cuffley conclusively held that denying the Klan access to the program violated its First Amendment rights. The Supreme Court has noted that “loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.” Elrod v. Burns, 427 U.S. 347, 373 (1976). Granting a stay pending appeal, therefore, would cause harm to plaintiffs in the form of continued loss of its First Amendment freedoms. Finally, defendants argue that the citizens of Missouri would be harmed if a stay is not granted. Defendants argue that signs may be stolen or vandalized and that “motorists may react violently to the Klan’s presence.” While this is a possibility, the Eighth Circuit has said that “the mere possibility of a violent reaction to [the Klan’s] speech is simply not a constitutional basis on which to restrict [its] right to speak.” Lewis v. Wilson, 253 F.3d 1077, 1081 (8th Cir. 2001).

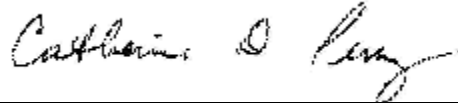
Accordingly,

**IT IS HEREBY ORDERED** that defendants’ motion to stay pending appeal [#54] is denied.

**IT IS FURTHER ORDERED** that plaintiffs’ motion for attorneys’ fees [#52] is granted to the extent set forth in the parties’ joint stipulation [#62], and plaintiffs are awarded attorneys’ fees in the amount of \$41,951.25 and costs in the amount of \$953.50. Payment of attorneys fees and costs shall be stayed pending a

resolution of the appeal, and interest shall be calculated based upon the statutory interest rate of 1.33 percent, as stipulated by the parties.

**IT IS FURTHER ORDERED** that defendants' motion for extension of time [#61] is denied as moot.

A handwritten signature in cursive script, appearing to read "Catherine D. Perry", is written above a horizontal line.

CATHERINE D. PERRY  
UNITED STATES DISTRICT JUDGE

Dated this 17th day of November, 2003.