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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

Maite Murphy, Circuit Court Judge

Appellate Case No.: 2020-001352

Kaci May and Kaci May as guardian ad litem for A.R.M., J.H.M., J.T.M., C.B.M., J.R.M., and J.W.M., ... Petitioners,

v.

Dorchester School District Two,
South Carolina Department of Social Services,
Michael Leach, and Jasmine Flemister..... Respondents.

RESPONDENT DORCHESTER SCHOOL DISTRICT TWO'S RETURN TO PETITION

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TABLE OF CONTENTS

PAGES

TABLE OF AUTHORITIES

PAGES

CASE LAW:

STATUTES:

RULES:

OTHER AUTHORITIES:

I. QUESTIONS PRESENTED

1. Do the factors set forth in SCACR 242(b) support a writ of certiorari?
2. Did the Court of Appeals Properly Uphold the Directed Verdict on the Ground that Appellant Failed To Show Irreparable Harm?
3. Did the Court of Appeals Properly Uphold the Directed Verdict on the Ground that Appellant Failed to Show Success on the Merits?
4. Did the Court of Appeals Properly Uphold the Directed Verdict on the Ground that Appellant Failed to Show the Lack of an Adequate Remedy at Law?

II. STATEMENT OF THE CASE

This lawsuit was brought against Respondents Dorchester School District Two ("DD2") South Carolina Department of Social Services ("DSS") and two DSS employees Michael Leach and Jasmine Flemister, pursuant to the S.C. Code Ann. §63-7-920 (2023), First, Fourth, Sixth, and Fourteenth Amendment rights under the United States Constitution and rights under §§ 3, 10, and 12 of Article I of the South Carolina Constitution. Petitioners, Kaci May and Kaci May as guardian ad litem for A.R.M., J.H.M., J.T.M., C.B.M., J.R.M., and J.W.M., filed the initial Complaint and Motion for a Temporary Restraining Order ("TRO") seeking temporary and permanent injunctive relief pursuant to 42 U.S.C. § 1983 and the South Carolina Constitution on December 7, 2017. On July 29, 2019, the Circuit Court heard the Motion for a TRO, and by form order dated July 30, 2019, denied the TRO both for failure to establish irreparable harm and for failure to establish that Petitioners lacked an adequate remedy at law. Respondents filed motions to dismiss. Those motions were denied in part and granted in part, dismissing the individually named DD2 defendants by form order dated March 17, 2020. Thereafter, Respondents filed separate answers to Petitioners' Complaint. The case proceeded through discovery and mediation, which was unsuccessful. A bench trial was held on August 11 and 12,

2020, at the conclusion of which the Court granted a directed verdict in favor of Respondents. The Order granting the directed verdict was filed on September 18, 2020. Petitioners filed their Notice of Appeal on October 8, 2020. The Court of Appeals heard oral argument from the parties on June 7, 2023 and upheld the lower court's ruling in Opinion No. 6053 filed on March 13, 2024. Petitioners filed a Petition for Rehearing on March 29, 2024. Respondents filed a Joint Return to the Petition for Rehearing on April 11, 2024. Thereafter, the Court of Appeals withdrew, substituted and refiled its opinion to reflect a minor revision to the Factual and Procedural History section of the opinion.

III. STATEMENT OF THE CASE

In late March 2017, Respondent DSS received a report of possible child abuse and/or neglect involving the May household. The report was made after Petitioner Kaci May disclosed some disturbing information at a school meeting with a number of school professionals, including regular and special education teachers, a school counselor, a school psychologist, then-Principal Dr. Wally Baird, J.H.M., and an outside advocate for the family. (Appendix 186-187.) Ms. May made very concerning statements, in graphic detail, among other things: that two of her children had sexually abused all of her other children; that the same children were killing the family's chickens and pet fish; that one of the boys had threatened her life; that she had very sick children who loved to rape other children in the household; that J.H.M. brutally raped her babies; that J.H.M. had dragged the victim children across the floor to rape them while those children dug their nails into the floor; and that J.H.M. used a wooden paddle or utensil to rape the other children. (Appendix 190-195.) In that meeting, in which J.H.M. was present, Ms. May called her a rapist. (Appendix 205.)

As a result of that report, DSS opened an investigation. As part of the investigation, DSS interviewed or attempted to interview five of the children at Sand Hill Elementary School in Defendant Dorchester School District Two where they attended school:

- On March 29, 2017, A.R.M. was interviewed
- On March 30, 2017, C.B.M., J.H.M., and J.R.M. were interviewed
- On May 12, 2017, A.R.M., J.H.M., J.R.M. were interviewed
- On May 25, 2017, J.T.M and C.B.M were interviewed

Ms. May conceded that she did not object to DSS interviewing the children at school while the case was still within the investigative period. (Appendix 363-364; 378-379.) Sometime after May 25, 2107, as a result of the above investigation, DSS indicated a case of physical neglect against Kaci May, a determination that she appealed. (Appendix 511.)

Because of the indicated finding against Ms. May, DSS filed a family preservation case in Family Court against her which was *still pending* in the fall of the 2017-18 school year. (Appendix 511, 532.) During the pendency of that case, by letter dated October 16, 2017, Ms. May's attorney requested that school officials prohibit DSS from meeting with the children. (Appendix 549.) Dr. Baird did not comply with this request but testified that he would have if he had received a court order. (Appendix 168.) By law, caseworkers are required to make a monthly face-to-face visit with children who are the suspected victims of abuse or neglect while a matter is pending. (Appendix 267-270, 227, 243.) That school year, DSS came to interview the children on the following dates:

- September 19, 2017, A.R.M., C.B.M., and J.W.M at Sand Hill Elementary[1]
- September 22, 2017, J.T.M. at Gregg Middle School

[1] There was differing testimony and notes as to whether DSS came to the school on September 18 or 19, 2017.

- November 20, 2017, A.R.M., C.B.M and J.W.M. at Sand Hill Elementary[2]

DSS did not come back to the schools after November 20, 2107, to interview any of the children and has not interviewed or attempted to interview any of the May children at school since November 2017. (Appendix 201.) Eventually, on June 14, 2018, the DSS action was voluntarily dismissed with no findings against either parent.

A.R.M. testified at trial that she was interviewed by DSS at the school and that she was uncomfortable talking to the caseworker but not upset. (Appendix 114-115.) She told her mother immediately after school that someone had come to talk to her, and Ms. May told her that she did not have to talk to DSS if she did not want to. (Appendix 109-110.) When DSS returned to meet with A.R.M. subsequently, she chose to talk with the caseworker because she did not want to disobey an adult. (Appendix 110-115.)

C.B.M. testified at trial that when DSS came to talk to him at school he was nervous but that he was not upset. (Appendix 125-126, 137.) Though he testified that he felt he did not have a choice but to talk to the DSS caseworker, he also testified that if he had a choice, he would have stayed and answered some of the questions. (Appendix 126-127, 130.) Just like his sister, after the first DSS visit, he told his mother about the interview, and Ms. May told him he could talk to DSS if he wanted but he did not have to. (Appendix 133-134.) When DSS returned a second time, he chose not to talk to the caseworker. (Appendix 134.) C.B.M testified that now that he knows he does not have to talk to DSS, he does not care if they come and try to talk to him again. (Appendix 130-131, 137.)

Dr. Baird sat in on the September 19, 2017, DSS interviews. None of the three children seemed upset, angry or were crying. (Appendix 198.) Their demeanor was calm. (Appendix 199.) Dr. Baird testified the children told him and the DSS caseworker that Ms. May said they

[2] Appendix 472-477.

were not allowed to speak to DSS, and they did not. (Id.) The meeting lasted no more than five or six minutes. (Appendix 198.) The DSS caseworker who came to meet with the children was very friendly, did not try to coerce the children into talking to her, and stopped asking questions immediately upon the children telling her that they were not allowed to talk to her. (Appendix 208-209.) She thanked the children and they returned to class. (Appendix 204, 209.) Similarly, during the November 20, 2017, visit, the three children stated they were not allowed to speak with the DSS caseworker. During that visit, an assistant principal, and a teacher's assistant for the youngest child, sat in while the DSS caseworker met with the children. (Appendix 280.) Because the children did not want to speak to her, the caseworker simply said hello to them, observed them, and sent them back to class. (Appendix 280-281.) The assistant principal did not ask any questions of the children or of the caseworker and the caseworker did not disclose to the assistant principal any information about the investigation. The meeting only lasted a few minutes. (Appendix 256; 285-288.)

The practice of DD2 schools when DSS comes to interview children is to ask the DSS worker to present his or her badge; make a copy of the badge, noting the date and time of the visit; and ask discreetly which child DSS wishes to see or interview. (Appendix 196.) DSS writes down the names of the children and the children are asked to come to the office. (Appendix 196; 271-272.) This process was followed in this case. (Appendix 472-477.) DD2 had someone from the school sit in on the meetings between DSS and students to make them feel safe and comfortable. (Appendix 161-162.) A student who refused to talk to DSS because his or her parent instructed otherwise would not be forced to talk to the DSS caseworker and would not be punished for refusing to answer questions. (Appendix 159-161.)

IV. ARGUMENT

A. Petitioners Have Not Identified Any Special And Important Reasons For This Court To Grant A Writ of Certiorari.

SCACR 242(b), **Considerations Governing Review**, provides as follows:

> A writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons. The following, while neither controlling nor fully measuring the Supreme Court's discretion or power to grant review in general, indicate the character of reasons which will be considered:
>
> (1) Where there are novel questions of law.
>
> (2) Where there is a dissent in the decision of the Court of Appeals.
>
> (3) Where the decision of the Court of Appeals is in conflict with a prior decision of the Supreme Court.
>
> (4) Where substantial constitutional issues are directly involved.
>
> (5) Where a federal question is included and the decision of the Court of Appeals conflicts with a decision of the United States Supreme Court.

None of these criteria are met. First, the application of the law as it applies to school-based interviews of students at school by DSS does not present a novel question of law and is controlled by both statute and federal caselaw precedent. Second, there was no dissent, or even a concurring opinion in the Court of Appeals. Third, Petitioners have not identified any decision of the Supreme Court which is in conflict with the Court of Appeals' decision in this case. Fourth, although Petitioners raise a constitutional issue in this case, it is not a substantial constitutional issue given the applicable statutory and controlling case law. Finally, DD2 respectfully submits that the Court of Appeals made a full review of the record in this case and certiorari review is not needed to read behind the Court of Appeals. Thus, the factors set forth in SCACR 242(b) strongly support a denial of certiorari in this case.

B. The Court Of Appeals Properly Upheld The Directed Verdict On The Ground That Petitioners Could Not Show Irreparable Harm Warranting Injunctive Relief.

"To obtain an injunction, a party must demonstrate irreparable harm, a likelihood of success on the merits, and the absence of an adequate remedy at law." *Richland County. v. S.C. Dep't of Revenue,* 422 S.C. 292, 310, 811 S.E.2d 758, 767 (2018). The standard for granting a permanent injunction is the same as that for preliminary relief, except that the court must consider plaintiff's actual success on the merits rather than the likelihood of success. *See Amoco Production Co. v. Village of Gambell*, 480 U.S. 531, 546 n. 12 (1987).

"Actions for injunctive relief are equitable in nature." *Denman v. City of Columbia*, 387 S.C. 131, 140, 691 S.E.2d 465, 470 (2010). An injunction is a drastic and "extraordinary equitable remedy courts may use in their discretion in order to prevent irreparable harm to a party" when no adequate remedy exists at law. *Hampton v. Haley*, 403 S.C. 395, 409, 743 S.E.2d 258, 265 (2013).

Due to its drastic and extraordinary nature, courts should issue injunctions with caution and only where no adequate remedy exists at law. *Id.* The grant or denial of an injunction by the trial court will not be reversed absent an abuse of discretion. *See Gilley v. Gilley*, 327 S.C. 8, 11–12, 488 S.E.2d 310, 312 (1997); *Strategic Res. Co. v. BCS Life Ins. Co.*, 367 S.C. 540, 544, 627 S.E.2d 687, 689 (2006) ("The power of the court to grant an injunction is in equity."); *City of Columbia v. Pic-A-Flick Video, Inc.*, 340 S.C. 278, 282, 531 S.E.2d 518, 520-21 (2000).

An injunction was not needed to prevent irreparable harm. The trial of this case took place during the week of August 10, 2020. It was undisputed that the last DSS interview with any of the May children was in November 2017, almost three years before the trial. (Appendix 201; 472-477) Petitioners offered no evidence of any threatened or pending DSS investigations of the family or plans to interview any of the children at school. (Appendix 373-379; 279; 282;

287.) Further, Petitioners did not identify any injury aside from inconvenience or mild upset at the prospect of DSS returning to interview the children, since the children attending school in DD2 at the time of the trial understood and had previously exercised their rights to refuse to speak with DSS. (Appendix 110-115; 125-135.) Two of the adopted children at issue in the case no longer live with the May family; Ms. May voluntarily relinquished her parental rights to them. Finally, Petitioners could only cite a speculative or hypothetical chance of any future DSS interviews at any of DD2's schools. This was simply not the type of "continuous trespass" in which ongoing disputes were imminent and likely to occur and an injunction might have been warranted to prevent them. *See Carter v. Lake City Baseball Club, Inc.*, 218 S.C. 255, 271-72, 62 S.E.2d 470, 477 (1950).

Accordingly, the Court of Appeals correctly held that the Circuit Court was well within its discretion to find that no showing of irreparable harm supported a permanent injunction prohibiting DSS from ever interviewing any of the May children at school again without a warrant or probable cause. Petitioners simply provided no evidence to support a showing of irreparable harm establishing the need for a permanent injunction.

C. The Court Of Appeals Properly Held That Petitioners Failed To Show A Likelihood Of Success On The Merits Warranting Injunctive Relief.

School employees are mandatory reporters under S.C. Code Ann. § 63-7-310. Pursuant to S.C. Code Ann. § 63-7-920, *Investigations and case determination*:

> (C) The department or law enforcement, or both, may interview the child alleged to have been abused or neglected and any other child in the household during the investigation. The interviews may be conducted on school premises, at childcare facilities, at the child's home or at other suitable locations and in the discretion of the department or law enforcement, or both, may be conducted outside the presence of the parents. To the extent reasonably possible, the needs and interests of the child

> must be accommodated in making arrangements for interviews, including time, place, method of obtaining the child's presence, and conduct of the interview. The department or law enforcement, or both, shall provide notification of the interview to the parents as soon as reasonably possible during the investigation if notice will not jeopardize the safety of the child or the course of the investigation. All state, law enforcement, and community agencies providing child welfare intervention into a child's life should coordinate their services to minimize the number of interviews of the child to reduce potential emotional trauma to the child. (emphasis added)

Additionally, S.C. Code Ann. § 63-7-390, Reporter immunity from liability, provides:

> A person required or permitted to report pursuant to § 63-7-310 or who participates in an investigation or judicial proceedings resulting from the report, acting in good faith, is immune from civil and criminal liability which might otherwise result by reason of these actions. In all such civil or criminal proceedings, good faith is rebuttably presumed. Immunity under this section extends to full disclosure by the person of facts which gave the person reason to believe that the child's physical or mental health or welfare had been or might be adversely affected by abuse or neglect.

DD2 simply does not have the authority to prevent DSS from conducting student investigations at school, regardless of whether a parent has expressed a desire that the students not be interviewed at school. Contrary to Petitioners' arguments, neither the Circuit Court nor the Court of Appeals ignored their constitutional claims in denying injunctive relief and refusing to declare S.C. Code Ann. § 63-7-920(C) unconstitutional.[3] The Circuit Court specifically addressed the potential applicability of the Fourth Amendment to the facts of the case and

[3] Petitioners made no cognizable argument to the Circuit Court or in their brief regarding alleged violations of the U.S. or State Constitutions other than search and seizure arguments that might potentially implicate the Fourth Amendment or the South Carolina corollary, Article I, Section 10. However, their petition for certiorari attempts to allege myriad other constitutional violations. (Petition, pp. 16-18). Likewise, the South Carolina Constitution is not self-effectuating and provides no civil remedy in these circumstances. *See Palmer v. State*, 427 S.C. 36, 46, 829 S.E.2d 255, 261 (Ct. App. 2019), *reh'g denied* (July 12, 2019).

determined that Petitioners had not established an unlawful, unreasonable seizure of the children by way of DSS interviews at school. (Appendix Page 22.)

The Fourth Amendment reads as follows:

> The right of the people to be secure in their persons, houses, papers, and effects, against *unreasonable* searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

(*emphasis added*.)

As the Circuit Court noted, the U.S. Supreme Court and the Fourth Circuit Court of Appeals have never applied Petitioners' desired standard to DSS interviews of children at school. *See Camreta v. Greene*, 563 U.S. 692, 713–14 (2011). The Fourth Circuit has applied a lesser standard for in-home visits and searches. *See Wildauer v. Frederick County*, 993 F.2d 369, 372 (4th Cir. 1993) ("investigative home visits by social workers are not subject to the same scrutiny as searches in the criminal context.") Further, and as May concedes, the Fourth Circuit has held that the state "has a legitimate interest in protecting children from neglect and abuse and in investigating situations that may give rise to such neglect and abuse." *See Martin v. St. Mary's Dep't of Social Services*, 346 F.3d 502, 506 (4th Cir. 2003). Other federal circuits examining social services interviews of students at schools have applied a reasonable suspicion standard rather than requiring probable cause or a warrant, instead reviewing whether a search was reasonable in its inception and scope. *See Schulkers v. Kammer*, 955 F.3d 520, 534 (6th Cir. 2020) (citing *New Jersey v. TLO*, 469 U.S. 325, 341 (1985)).

First, the Circuit Court properly held that the interviews of the May children did not constitute a "seizure" for purposes of the Fourth Amendment. A "seizure" triggering the Fourth Amendment's protections occurs only when government actors have, "by means of physical

force or show of authority, ... in some way restrained the liberty of a citizen." *See Terry v. Ohio*, 392 U.S. 1, 19, n. 16 (1968); *Brower v. County of Inyo*, 489 U.S. 593, 596 (1989); *Camden v. Hilton*, 360 S.C. 164, 175, 600 S.E.2d 88, 93 (Ct. App. 2004).

The Circuit Court, which heard the testimony and observed the demeanor of the student witnesses, noted that the contested interviews with the May children at issue in this case were of very limited duration and did not upset the children. The children were aware of their rights to terminate the interviews or refuse to speak to the social workers and did so. As such, the Circuit Court properly found that the limited inquiries made of the May children did not rise to the level of a Fourth Amendment seizure, in contrast to the cases cited by Petitioners that either involved rigorous and extended questioning at public schools by social services and law enforcement personnel or no articulable suspicion of abuse or neglect to justify an interview at school. *See, e.g., Stoot v. City of Everett*, 582 F.3d 910, 918 (9th Cir. 2009) (two-hour school interview of 14-year-old boy during which police detective threatened punishment if the child denied guilt and promised leniency if he admitted guilt constituted a seizure); *Jones v. Hunt*, 410 F.3d 1221, 1226 (10th Cir. 2005) (an "emotionally vulnerable" 16-year-old female was seized where a social worker and uniformed police officer, both of whom the teenager knew "had the authority to determine her custodial care," confined her for an "hour or two" in a small office at her school and repeatedly threatened that they would arrest her if she did not agree to live with her father); *see Schulkers,* 955 F.3d at 534, 538 (no plausible or articulable suspicion that any child had been subjected to abuse and neglect prior to interviews). Further, Petitioners offered no evidence that DD2, as opposed to DSS, was responsible for any alleged "seizure" for purposes of the DSS interviews.

Second, even if the very limited DSS interviews of the May children could have been considered "seizures" for constitutional purposes, the Circuit Court properly found that the interviews at school were reasonable in both their inception and scope and highly distinguishable from those federal courts have found to be unreasonable under the Fourth Amendment. The DSS investigation, case, and interviews were occasioned by Kaci May's specific and graphic report to DD2 teachers and officials that two of her children were sexually abusing her other children in the home and killing household pets. (Appendix 190-194.) DSS attempted to interview the May children at their home and only interviewed them at school when Ms. May continually rebuffed them. (Appendix 246-251; 274-279.) The contested interviews were limited in both time and scope, with none of them lasting longer than a few minutes. (Appendix 271-272; 284-286.) Finally, as noted, the children were not detained after refusing to answer questions or declaring their opposition to the interviews, as instructed by Ms. May.

Thus, the Circuit Court properly rejected Petitioners' attempt to read the word "unreasonable" out of the Fourth Amendment and determined that even if any of the interviews constituted a "seizure" for constitutional purposes, any DSS interviews at school were reasonable at their inception and in their scope under the facts and circumstances Petitioners presented.

S.C. Code Ann. § 63-7-920(C) controls the School District's duties and responsibilities as to DSS interviews of students on campus. Because DSS's interviews of the children did not violate either the Fourth Amendment in this case or § 63-7-920(C), there was no need for the Circuit Court to address the ultimate constitutionality of § 63-7-920(C) as applied to hypothetical fact situations not before it, as Petitioners urge.[4] All statutes are presumed constitutional and

[4] Section 63-7-920(c) clearly withstands the applicable level of constitutional scrutiny, as there is obviously a rational basis for its enactment. Providing DSS investigators authority to interview students away from parents being investigated for potential abuse is inherently and obviously necessary to both protect the children and to obtain unbiased information pertinent to the investigation.

will, if possible, be construed so as to render them valid. *Davis v. Cnty. of Greenville*, 322 S.C. 72, 77, 470 S.E.2d 94, 96 (1996). Court review of statutes begins with a presumption of constitutionality. *Curtis v. State*, 345 S.C. 557, 569, 549 S.E.2d 591, 597 (2001) ("This Court has a limited scope of review in cases involving a constitutional challenge to a statute because all statutes are presumed constitutional and, if possible, will be construed to render them valid."). "[A] legislative act will not be declared unconstitutional unless its repugnance to the Constitution is clear and beyond a reasonable doubt." *Id.* at 570, 549 S.E.2d at 597. Accordingly, the Circuit Court properly rejected Petitioners' argument that the statute was unconstitutional either on its face or as applied in this case, and properly held that DD2's actions were at all times consistent with the statute.

Finally, Petitioners cite no authority for holding *school officials* constitutionally responsible for a DSS-conducted interview of students on school property, and the Circuit Court should be affirmed on this additional ground to the extent that it denied Petitioners injunctive relief against DD2. *See* SCACR Rule 220(c) (trial court may be affirmed on any ground appearing in the record).

D. The Court Of Appeals Properly Held That Petitioners Had An Adequate Remedy At Law.

The Court of Appeals properly recognized that if DSS were to return and conduct interviews in an unconstitutional or tortious matter, Petitioners would have adequate legal remedies under state and federal law and could seek actual and compensatory damages. As such, it was well within the trial court's discretion to deny injunctive relief on this additional basis. *See, e.g. Knohl v. Duke Power Co.*, 260 S.C. 374, 196 S.E.2d 115 (1973) (plaintiff not entitled to injunction unless he has "no adequate and complete remedy at law"); 42 Am. Jur. 2d., *Injunctions*, § 24 (2000 & Supp. 2004) ("an injunction will not be granted where there is a choice

between the ordinary processes of law and the extraordinary remedy of injunction, and where the remedy at law sufficiently provides the injured party with the full relief to which the party is entitled under the circumstances."). An injunction will typically be denied "if the applicant has an adequate remedy in the form of money damages or other relief." 11A Wright, Miller & Kane, *Federal Practice and Procedure* § 2498.1 at 149-50 (1995); *see also Scratch Golf Co. v. Dunes W. Residential Golf Properties, Inc.*, 361 S.C. 117, 123, 603 S.E.2d 905, 908 (2004).

Such is the case here. Petitioners' strategic decision to forgo a claim for damages and instead pursue only injunctive relief does not change the outcome or establish that a remedy at law would not have been adequate in the instant case had Petitioners sought one, nor did they make any showing that an appropriate legal remedy would be unavailable if a hypothetical or highly speculative inappropriate or unconstitutional interview of the children were to occur at school in the future. Petitioners cite no authority for the argument that civil rights cases are not attractive to attorneys, and thus, it is unlikely that someone challenging the legality of a social services interview of a child at school could obtain a legal remedy. (Petition, p. 20.) Accordingly, the Circuit Court properly exercised its discretion in holding that, as a matter of equity, Petitioners did not establish the final element needed for injunctive relief. The Court of Appeals properly upheld its reasoning.

V. CONCLUSION

For the foregoing reasons, Respondents respectfully submit that this Court should deny the Petition for Writ of Certiorari.

(Signature Page Follows)

Respectfully submitted,

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