

## UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Everett McKinley Dirksen United States Courthouse  
Room 2722 - 219 S. Dearborn Street  
Chicago, Illinois 60604



Office of the Clerk  
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## ORDER

May 7, 2014

Before

DIANE P. WOOD, *Chief Judge*  
WILLIAM J. BAUER, *Circuit Judge*  
FRANK H. EASTERBROOK, *Circuit Judge*

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| Nos.: 14-1822, 14-1888,<br>14-1899, 14-2006 and<br>14-2012   | ERIC O'KEEFE and WISCONSIN CLUB FOR GROWTH<br>INCORPORATED,<br>Plaintiffs - Appellees<br><br>v.<br><br>JOHN T. CHISHOLM, BRUCE J. LANDGRAF and DAVID ROBLES,<br>Defendants - Appellants |
| <b>Originating Case Information:</b>   |   |
| District Court No: 2:14-cv-00139-RTR<br>Eastern District of Wisconsin<br>District Judge Rudolph T. Randa |   |

The following are before the court:

1. **DEFENDANTS-APPELLANTS' EMERGENCY MOTION FOR STAY PENDING APPEAL & MEMORANDUM IN SUPPORT OF MOTION**, filed on May 5, 2014, by counsel for the appellants.
2. **DEFENDANTS-APPELLANTS' SECOND EMERGENCY MOTION FOR STAY AND REQUEST FOR SINGLE JUDICIAL REVIEW**, filed on May 7, 2014, by counsel for the appellants.
3. **DEFENDANTS-APPELLANTS' EMERGENCY MOTION FOR SUMMARY**

Appeal nos. 14-1822, et al.

Page 2

**VACATION OF THE DISTRICT COURT'S MAY 6, 2014 ORDER AND MEMORANDUM IN SUPPORT OF MOTION**, filed on May 7, 2014, by counsel for the appellants.

4. **ERIC O'KEEFE AND THE WISCONSIN CLUB FOR GROWTH'S RESPONSE TO DEFENDANT-APPELLANTS' EMERGENCY MOTION FOR STAY PENDING APPEAL**, filed on May 7, 2014, by counsel for the appellees.

*Apostol v. Gallion*, 870 F.2d 1335 (7th Cir. 1989), holds that, once a litigant files a notice of appeal, a district court may not take any further action in the suit unless it certifies that the appeal is frivolous. The district court failed to follow that rule when, despite the notice of appeal filed by several defendants, it entered a preliminary injunction. This court accordingly stays the injunction, and all further proceedings in the district court, until the judge has ruled definitively on the question posed by *Apostol*.

If the district court concludes that the appeal is non-frivolous with respect to the complaint's request for injunctive relief under the doctrine of *Ex parte Young*, 209 U.S. 123 (1908), then this stay will continue in force until this court has resolved the appeal on the merits.

If the district court concludes that the appeal is frivolous with respect to the complaint's request for injunctive relief under the doctrine of *Ex parte Young*, then proceedings in the district court may resume, though appellants would be entitled to renew in this court their request for a stay.

Whether or not the district court determines that the appeal is frivolous, the portions of the injunction that require defendants to return or destroy documents will remain stayed as long as proceedings continue in this court. Compliance with those portions of the injunction could moot some or all of the issues on appeal. Whether or not any pre-injunction order is appealable, the preliminary injunction is itself open to appeal under 28 U.S.C. §1292(a). It would be inappropriate to implement the injunction in a manner that effectively prevents appellate review. Plaintiffs' interests, pending the review authorized by §1292, can be protected if defendants hold the information in confidence and not use it. We hereby stay the return-and-destroy portions of the injunction and order defendants not to disclose or use the information they have gathered, and that is within the scope of the injunction, pending further order of this court.