

IN THE SUPREME COURT OF IOWA

LEAGUE OF UNITED LATIN) Supreme Court No. _____
AMERICAN CITIZENS OF IOWA,) No. CVCV081901
and MAJORITY FORWARD,)
Plaintiffs,)
v.) APPLICATION FOR
IOWA SECRETARY OF STATE) INTERLOCUTORY APPEAL
PAUL PATE, in his official) Expedited Relief Requested
capacity,) Immediate Stay Requested
Defendant.) Current Trial Date: 03/23/2022
_____) Date on which mailing of
DONALD J. TRUMP FOR) absentee ballots begins:
PRESIDENT, INC., REPUBLICAN) October 5, 2020
NATIONAL REPUBLICAN)
SENATORIAL COMMITTEE,)
NATIONAL REPUBLICAN)
CONGRESSIONAL COMMITTEE,)
and REPUBLICAN PARTY OF)
IOWA,)
Intervenors)

Gary Dickey, AT#0001999
DICKEY, CAMPBELL, & SAHAG LAW FIRM, P.L.C.
301 East Walnut Street, Suite 1
Des Moines, Iowa 50309
PHONE: 515.288.5008
FAX: 515.288.5010
E-MAIL: gary@iowajustice.com

APPLICATION FOR INTERLOCUTORY APPEAL

COME NOW League of United Latin American Citizens of Iowa (“LULAC”) and Majority Forward (collectively, “Plaintiffs”), through counsel, and apply to the Supreme Court or any Justice thereof to grant an appeal in advance of final judgment from the district court’s ruling dated September 28, 2020, a copy of which is attached hereto. Iowa R. App. Pro. 6.104; *Lewis Investments, Inc. v. City of Iowa City*, 703 N.W.2d 180 (Iowa 2005) (granting an interlocutory appeal to review the district court’s temporary injunction ruling). Plaintiffs request immediate, expedited review of the district court’s temporary injunction. In support of this application for interlocutory appeal, Plaintiffs incorporate their contemporaneously filed brief and further state:

1. Iowa voters are seeking to vote by absentee ballot at unprecedented levels in the upcoming November general election. As of September 25, 2020, nearly 584,000 Iowans have requested absentee ballots. Iowa election officials have been preparing for the general election based on the assumption that absentee voting will be allowed, encouraged, and widespread.

2. However, the Iowa General Assembly recently amended the law, Section 124 of House File 2643 (2020) (“HF 2643”), expressly banning county auditors’ long-standing process of using information readily available to them in the voter registration database to fill in omitted or incorrect information from an absentee ballot request. Instead, auditors must “contact the applicant by telephone and electronic mail” within 24 hours after receiving the Request Form to attempt to obtain the information. HF 2643 § 124; Iowa Code § 53.2(4)(b). If a voter can’t be reached by those means, the auditor must physically mail a letter asking for the missing data. HF 2643 § 124; Iowa Code § 53.2(4)(b).

3. HF 2643 does not specify a period of time that an auditor must wait between calling or emailing and sending the letter, nor does it provide any time by which an auditor must mail the letter if the voter’s phone number and email are missing entirely. HF 2643 § 124; Iowa Code § 53.2(4)(b).

4. However, only once the Request Form is complete can the county auditor mail the absentee ballot to the voter, *see* Iowa Code § 53.2(4)(a), and, for the voter to have their vote count, they must complete the ballot and postmark it no later than the Monday before Election Day.

Iowa Code § 53.17(1)(b). If the auditor never gets the missing information—information already known to the State and in I-Voters—from the voter themselves, they cannot process the Request Form and the voters will not be able to vote absentee. *See* HF 2643 § 124; Iowa Code § 53.2(4)(b).

5. HF 2643 creates a serious risk that any voter submitting a Request Form on or after October 20, 2020 (four days before the state’s deadline for voters to submit Request Forms for the November election), or potentially even earlier, will not have their ballot counted. (*Id.*) Indeed, voters who submit their Request Form up to ten days before the deadline are at risk of not having their ballot counted. (*Id.* at ¶ 28.) A conservative estimate for the number of voters who will face this risk ranges from 10,000 to 30,500. (*Id.* at ¶ 42.) Those numbers are likely to increase in the November election, a presidential election in which high turnout is expected, as a result of the ongoing pandemic. (08/10/2020 ISACA Decl. ¶ 10; 08/10/2020 Weipert Decl. ¶ 8.)

6. Delays in processing absentee ballot Request Forms as substantially more voters seek to safely exercise their right to the franchise during a pandemic will only be exacerbated by the struggles of

the U.S. Postal Service, which has already proven in multiple primaries around the country to be struggling to timely deliver election mail in the pandemic.¹ And the postal service has recently warned that voters should expect further election-related mail delays in November.² Voters who do not receive their absentee ballots as anticipated are not only severely burdened, but, in the face of confusion and last-minute election day voting, may not be able to vote at all, whether due to work, school, illness, health risks, or other reasons.

7. Because HF 2643 unnecessarily hinders, and in some case entirely halts, the ability to receive an absentee ballot, the issues presented are of critical importance with the election only a month away and amidst a global pandemic in which Iowans are exercising their right

¹ *See, e.g.*, 08/10/2020 Bryant Decl., Exs. 8 (discussing issues with New York’s primary), 13 (highlighting issues with Wisconsin primary due to the COVID-19 related increase in the number of voters who choose to vote by mail), 18 (outlining issues with Ohio’s primary), 19 (discussing issues with Georgia’s June 9 primary, as well as other June 9 primaries).

² 08/10/2020 Bryant Decl., Exs. 13 at 6 (“Ballots requested less than seven days before an election are at high risk of not being delivered, completed by voters, and returned to the election offices in time”), 14, and 15 at 2 (U.S. Postal Service recommends that voters request their absentee ballots not later than 14 days before Election Day).

to vote absentee in unprecedented numbers for the health and safety of their families.

8. Legislators claimed that the bill was motivated by concerns about “voter security,” but were unable to identify any specific instance of absentee-ballot-related voter fraud or any other problem that the bill was purportedly trying to remedy, much less explain how this cumbersome process was tailored to address that problem. (08/10/2020 Br. Mot. Temp. Inj. at 8 n.3).

9. In reality, Iowa already has a robust election security framework that has been nationally recognized by the Department of Homeland Security as a model for other states to follow and earned Secretary Pate the NASS IDEAS Award in 2019 from the National Association of Secretaries of State for his statewide election security efforts. (08/10/2020 ISACA Decl. ¶ 15.)

10. Perhaps most notably, the Iowa county auditors’ official association actively opposed HF 2643, because it “burdens Iowa county auditors and voters with no corresponding electoral security benefit to the people of Iowa.” (08/10/2020 ISACA Decl. ¶ 16; *see also* 08/10/2020 Weipert Decl. ¶ 12 (“We do not have a problem with election integrity in

Iowa. I am not aware of any incident of absentee-ballot-related election fraud in Johnson County during my tenure.”.)

11. On September 28, 2020 the district court denied Plaintiffs’ Motion for Temporary Injunction after applying rational basis scrutiny to Plaintiffs’ claims. (09/28/2020 Order.)

12. HF 2643 severely burdens the right to vote absentee and therefore violates the Iowa Const. art. II, § 1, which expressly protects the right to vote as a fundamental right to vote, therefore Plaintiffs’ claims should be evaluated under strict scrutiny.

13. The district court also erred when it found HF 2643 could withstand rational basis review. The district court’s analysis, the Secretary and Intervenors’ arguments on the papers and at oral argument, and HF 2643’s legislative history do not provide a legitimate state interest in banning county auditors from using I-Voters.

14. Emergency review is necessary because the election is merely 33 days away.

15. Cases involving election law issues preceding an impending election are especially worthy of interlocutory and expedited review. *See LULAC v. Pate*, 18-1276 (Iowa Aug. 10, 2018) (granting expedited voter

identification laws); *Chiodo v. Schultz*, 846 N.W.2d 845 (Iowa 2014) (granting expedited review to a candidate's ballot access challenge seven weeks prior to a primary election).

16. In all, tens of thousands of voters could be affected by HF 2643 and will likely not receive ballots in time to exercise their fundamental right to vote.

17. Thus, a determination of the correctness of the district court's temporary injunction order before trial on the merits will better serve the interests of justice.

CONCLUSION

WHEREFORE, Plaintiffs respectfully request this Court to take the matter under expedited consideration, grant this application, and allow an immediate appeal from the district court ruling of September 28, 2020. Plaintiffs, therefore, request that this Court:

- (A) Grant their application for interlocutory appeal of the September 28, 2020 order denying a temporary injunction; and
- (B) Order an expedited briefing schedule and set this matter for oral argument within ten days.

RESPECTFULLY submitted this 30th day of September 2020.

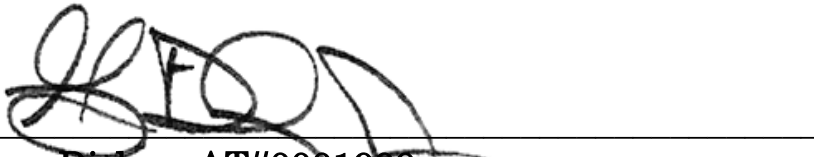


Gary Dickey, AT#0001999
Counsel of Record for Appellants
DICKEY, CAMPBELL, & SAHAG LAW FIRM, P.L.C.
301 East Walnut Street, Suite 1
Des Moines, Iowa 50309
PHONE: 515.288.5008 FAX: 515.288.5010
E-MAIL: gary@iowajustice.com

PROOF OF SERVICE & CERTIFICATE OF FILING

On September 30, 2020, I served this application on all parties by electronic mail.

I further certify that I did file this application with the Clerk of the Iowa Supreme Court by EDMS on September 30, 2020.



Gary Dickey, AT#0001999
Counsel of Record for Appellants
DICKEY, CAMPBELL, & SAHAG LAW FIRM, PLC
301 East Walnut St., Ste. 1
Des Moines, Iowa 50309
PHONE: (515) 288-5008 FAX: (515) 288-5010
EMAIL: gary@iowajustice.com

Marc Erik Elias (*pro hac vice to be approved*)
Christopher J. Bryant (*pro hac vice to be approved*)
PERKINS COIE, LLP
700 Thirteenth Street, N.W., Suite 600
Washington, D.C. 20005-3960
Telephone: (202) 654-6200

Facsimile: (202) 654-6211
melias@perkinscoie.com
cbryant@perkinscoie.com

Kevin J. Hamilton (*pro hac vice to be approved*)
Amanda J. Beane (*pro hac vice to be approved*)
Nitika Arora (*pro hac vice to be approved*)
Heath L. Hyatt (*pro hac vice to be approved*)

PERKINS COIE, LLP

1201 Third Avenue, Suite 4900

Seattle, W.A. 98101-3099

Telephone: (206) 359-8000

Facsimile: (206) 359-9000

khamilton@perkinscoie.com

abeane@perkinscoie.com

narora@perkinscoie.com

hhyatt@perkinscoie.com

Counsel for the Plaintiffs