IN THE SUPREME COURT OF IOWA

LEAGUE OF UNITED LATIN AMERICAN CITIZENS OF IOWA and MAJORITY FORWARD,
Plaintiffs-Appellants,

v.

IOWA SECRETARY OF STATE PAUL PATE,
in his official capacity, Defendant-Appellee,

REPUBLICAN NATIONAL COMMITTEE, DONALD J. TRUMP FOR PRESIDENT, INC., NATIONAL REPUBLICAN SENATORIAL COMMITTEE, NATIONAL REPUBLICAN CONGRESSIONAL COMMITTEE, and THE REPUBLICAN PARTY OF IOWA,
Intervenors-Appellees.

No. 20-1249

BRIEF OF INTERVENORS-APPELLEES

Appeal from the Iowa District Court for Johnson County
Hon. Lars Anderson, District Judge
Case No. CVCV081901

/s/ Alan R. Ostergren
Alan R. Ostergren
500 Locust Street, Suite 199
Des Moines, IA 50309
(515) 207-0134
alan.ostergren@ostergrenlaw.com

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Routing Statement

This appeal should be retained by the Iowa Supreme Court. It involves substantial constitutional questions about the validity of a statute and the conduct of the 2020 general election. The urgency of the case alone counsels in favor of retention. Iowa R. App. P. 6.1101(2)(a) and (c).

Statement of the Case

The League of Latin American Voters of Iowa and Majority Forward (referred to collectively as LULAC in this brief) filed an action in Johnson County on July 14, 2020 against Iowa Secretary of State Paul Pate. The action sought an order prohibiting Pate from enforcing a recently enacted law that regulated how county auditors were to process incomplete or inaccurate absentee ballot request (ABR) forms. LULAC did not sue any county auditors–despite the fact that they challenged a statute that altered the practices of county auditors and placed no enforcement duties on the Secretary of State.

The Republican National Committee, Donald J. Trump for President, Inc., the National Republican Senatorial Committee, the National Congressional Campaign Committee, and the Republican Party of Iowa (referred to collectively as the RNC) filed a motion to intervene on July 24, 2020.

The next major action in the litigation was the LULAC resistance to the RNC intervention filed on August 6, 2020. LULAC did not seek a temporary

injunction until August 10, 2020, or 27 days after the filing of their petition and original notice. Due to a congested court calendar, the case was not scheduled to be heard by the district court until September 23, 2020. Intervention by the RNC was permitted on September 8, 2020.

The district court denied the LULAC request for temporary injunction in an order dated September 25, 2020. The district court held that LULAC was unable to demonstrate that it was likely to prevail on its claims that the recent legislation would negatively impact the right of any voters to vote in the upcoming election. Failing this threshold inquiry, the district court did not consider the other requirements for the grant of a temporary injunction. It was also not required to consider whether, at such a close point to the election, an injunction was inappropriate even if LULAC could show it would otherwise be entitled to such relief. This interlocutory appeal follows.

Statement of Facts

Iowa law broadly permits absentee voting. Indeed, voters who wish to vote absentee need not explain why they cannot vote on election day at a polling place (as many other states require). The law also includes only a modest identification requirement. Rather than requiring voters to include a photocopy of their photo identification (as other states require) or to sign documents in the presence of witnesses (as other states require), they simply write an identification number on

their application for an absentee ballot. Most voters use the number from their Iowa driver's license or nonoperator identification card issued by the Iowa Department of Transportation. Voters who lack this number can use a four-digit number provided by the Iowa Secretary of State's office.

Sometimes a voter fails to correctly complete an absentee ballot request form. When that happens, what must a county auditor do upon receiving an incomplete or incorrectly completed form? One option was letting the county auditor guess at what the voter meant to fill in. A clerical employee would look at the elections database, guess who the voter is (based on whatever partial information the incomplete form contained), and send out an absentee ballot.

That used to be a process Iowa allowed. But last summer the Iowa Legislature unequivocally rejected that option. Now, the law requires the county auditor to contact the submitter of the ABR within 24 hours to get the correct information *from the voter*. Iowa Code § 53.2(4)(b) as amended by 2020 Iowa Acts Ch. 1121, § 124 (H.F. 2643). The auditor can contact the submitter by email or phone, or, failing success with those methods, by a letter. This newly refined process straightforward: Iowa does not want auditors to take their best guess at who sent an ABR form. Iowa law requires basic verification upon receipt of an incomplete or incorrectly completed ABR form.

The 2020 general election is underway. Iowa county auditors started mailing absentee ballots on October 5, 2020 and will continue to do so until ten days before the election, or October 24, 2020. Iowa Code §§ 53.10 and 53.2(1)(b). Iowans are voting by absentee ballots in record numbers. Over 750,000 Iowans have requested absentee ballots as of October 14, 2020.[1] This compares favorably to the 653,438 who ultimately cast an absentee ballot in the 2016 general election.[2]

Argument

I. A party seeking a temporary injunction must demonstrate a likelihood of success on its claims. LULAC cannot establish that H.F. 2643 harms its constitutional rights, or the constitutional rights of voters. Did the district court correctly deny a temporary injunction?

A. Preservation for appellate review.

LULAC filed a motion for temporary injunction and timely sought permission for an interlocutory appeal. RNC does not contest that the claims it

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[1] https://sos.iowa.gov/elections/pdf/2020/general/AbsenteeCongressional2020.pdf (last viewed Oct. 14, 2020).
[2] https://sos.iowa.gov/elections/pdf/2016/general/AbsenteeCongressional2016.pdf (last viewed Oct. 14, 2020).

raised in its motion that were ruled on by the district court are preserved for review.

B. Standard of review.

The general standard of review for the issuance of an injunction is de novo. *Max 100 L.C.* v. *Iowa Realty Co., Inc.*, 621 N.W.2d 178, 180 (Iowa 2001). "Yet, the decision to issue or refuse a temporary injunction rests largely within the sound discretion of the trial court." *Id.* (citing *Kent Products, Inc.* v. *Hoegh*, 245 Iowa 205, 211, 61 N.W.2d 711, 714 (1953)). "Thus, we will not generally interfere with the district court decision unless the discretion has been abused or the decision violates some principle of equity. The decision will also be reversed if not based on sufficient grounds." *Id.* at 180-81. This rule is modified for injunctions related to election laws. This is explained in Division II of this brief.

C. Factors for grant of a temporary injunction.

A court faced with a request for a temporary injunction will consider (1) whether the plaintiffs are likely to succeed on their claims; (2) whether the plaintiffs will be substantially injured if temporary relief is not ordered; (3) whether there is no other adequate remedy available to the plaintiffs; and (4) whether the balance of hardships warrant injunctive relief. *PIC USA* v. *N. C. Farm P'ship*, 672 N.W.2d 718, 723 (Iowa 2003). None of these factors support the entry of a temporary injunction.

It should also be noted that LULAC's litigation position is contrary to the initial positions advanced when the RNC sought injunctions against Iowa county auditors for disobedience to an emergency election directive of the Secretary of State. See, *RNC* v. *Miller*, No. 20-1091; *RNC* v. *Miller*, No. 20-1140; *RNC* v. *Gill*, No. 1169. In each case, LULAC disputed the proposition that Iowa county auditors were required to obey the orders of the Secretary of State related to election administration. But now, LULAC apparently believes the Secretary of State can order county auditors to obey an injunction, why else have they failed to sue the county auditors who are enforcing the law they say is unconstitutional?. Otherwise, injunctive relief would be inappropriate against the Secretary of State to control the actions of third parties. *Schlotfelt* v. *Vinton Farmers' Supply Co.*, 109 N.W.2d 695, 701, 252 Iowa 1102, 1113 (1961) (injunction should not issue requiring defendant to control actions of customers accessing his property). LULAC has yet to explain this inconsistency in their position.

D. LULAC cannot demonstrate that it is likely to succeed on its claims.

LULAC's case proceeds from the premise that a voter has a constitutional right to submit an incomplete or incorrect request for an absentee ballot without consequence. This ambitious claim conflates the statutory right to request an absentee ballot with the fundamental constitutional right to vote. Nothing about

this challenged law affects an individual's right to vote in any manner. LULAC also misstates the correct standard of review for a neutral and nondiscriminatory voting regulation.

1. Requiring a county auditor to obtain information for an absentee ballot application from the voter has no impact on the fundamental right to vote.

LULAC has a severe definitional problem in its case. It claims that the ABR form verification required by H.F. 2643 interferes with the fundamental right to vote. But the U.S. Supreme Court has long confirmed that there is no fundamental constitutional right to vote by absentee ballot. *McDonald* v. *Board of Election Com'rs of Chicago*, 394 U.S. 802, 807-08 (1969). ("It is thus not the right to vote that is at stake here but a claimed right to receive absentee ballots. Despite appellants' claim to the contrary, the absentee statutes…do not themselves deny appellants the exercise of the franchise.").

As this Court just recognized, the claim that absentee ballot rules and procedures inhibit the right to vote "should be put in perspective." *DSCC* v. *Pate*, No. 20-1281, slip op. at 9 (Iowa Oct. 14, 2020) (hereinafter *DSCC*). "Iowa is one of only eleven states where the government mailed an absentee ballot application to every registered voter." *Id.* "The absentee voting period began on October 5 and continues through November 2. In-person early voting is also allowed during

that period." *Id.* Iowa is quite generous with its Election Day rules. "Iowa also allows same-day voter registration. On Election Day itself, the polls will be open in Iowa for fourteen hours, one of the longest time periods afforded in the nation." *Id.*

Absentee voting is "designed to make voting more available to some groups who cannot easily get to the polls." *Id.* at 807. "So such laws increase options–not restrictions. They do not *themselves* deny voters the exercise of the franchise." *Texas Democratic Party* v. *Abbott*, 961 F.3d 389, 415 (5th Cir. 2020) (Ho., J., concurring). LULAC's citation to *Obama for America* v. *Husted*, 697 F.3d 423 (6th Cir. 2012), in their application for interlocutory appeal misses the mark. LULAC cites it for the claim that *McDonald* has no application to laws which prevent voters from voting. But in *Obama for America*, the Sixth Circuit considered an Ohio law which expressly permitted military voters to cast ballots during an early voting period and prohibited all others from so doing. The court rejected this. "[T]here is no relevant distinction between the two groups…any voter could be suddenly called away and prevented from voting on Election Day…[t]here is no reason to provide these voters with fewer opportunities to vote than military voters…." *Id.* at 435. This case simply has no bearing on a statute which places a uniform requirement for processing an ABR form. Every Iowa voter has the

same rule: you have to fill out the ABR form correctly and the auditor's staff won't guess on your behalf. *McDonald* applies to the analysis of this statute.

This Court has applied *McDonald* in a challenge to absentee voting rules. This Court considered a contested legislative election where there was a claim that absentee ballots were improperly challenged for violating a statutory requirement about how to provide ballots to hospital patients. "Plaintiffs urge that [Iowa Code] § 53.17 facially, in setting apart patients as voters and requiring representatives of the two major parties to deliver absentee ballots to them, violates equal protection and due process of law." *Luse* v. *Wray*, 254 N.W.2d 324, 330-31 (Iowa 1977). "This claim, if substantiated, would rise to the level of a substantial constitutional deprivation which would entitle plaintiffs to judicial relief." *Id.*

This Court rejected the proposition. "The issue of facial unconstitutionality appears to turn on classification; we have no doubt that under its power to regulate voting, the legislature could impose the requirements of § 53.17 on all absentee voters." *Id.* After considering arguments to apply heightened scrutiny, the Court stated "[t]he appropriate test would appear to be the former one of a rational basis." *Id.* (citing *McDonald*, supra). "Section 53.17 is not of a discriminatory nature; nothing indicates any invidious attempt to hinder voting on the basis of race, wealth, or other improper basis." *Id.* "Rather than invidious

discrimination, § 53.17 appears to be a good faith effort to improve the voting process of the class involved." *Id.*

Luse controls here. This Court has recognized that the legislature is free to impose nondiscriminatory absentee voting rules. If a rule that requires an absentee ballot to be hand delivered to a voter qualifies as nondiscriminatory, so does a law that forbids the county auditor from guessing how to fill in an incomplete ABR form. Plaintiffs cannot demonstrate that under Iowa law their claim has any merit.

2. A neutral and nondiscriminatory requirement to validate incomplete ABR forms should only be subjected to rational basis review and H.F. 2643 easily survives this scrutiny.

"Because the 'right to vote in any manner … [is not] absolute' and the government must play an 'active role in structuring elections,' election laws 'invariably impose some burden upon individual voters.'" *Luft* v. *Evers*, 963 F.3d 665, 671-72 (7th Cir. 2020) (citing *Burdick* v. *Takushi*, 504 U.S. 428, 433 (1992)). "Only when voting rights have been severely restricted must states have compelling interests and narrowly tailored rules." *Id.* at 672. (citing *Burdick*, supra, and *Anderson* v. *Celebrezze*, 460 U.S. 780 (1983)). "[E]lection laws are weighed under a balancing approach, in which 'evenhanded restrictions that protect the

integrity and reliability of the electoral process itself' are generally not considered 'invidious.'" *DSCC* at *10.

Modest burdens associated with the verification of voting records are perfectly legitimate. "[A] person does not have a federal constitutional right to walk up to a voting place on election day and demand a ballot. States have valid and sufficient interests in providing for some period of time–prior to an election–in order to prepare adequate voter records and protect its electoral processes from possible frauds." *Marston* v. *Lewis*, 410 U.S. 679, 680 (1973) (per curiam). "Nondiscriminatory restrictions that impose only slight burdens are generally justified by the need for orderly and fair elections, whereas severe burdens must be narrowly tailored to serve a compelling state interest." *Id.* There is no right to be free from "the usual burdens of voting." *Crawford* v. *Marion Cty. Election Bd.*, 553 U.S. 181, 198 (2008) (op. of Stevens, J.).

These minor burdens are common and unavoidable. As noted just days ago by this Court, "[t]here is the burden of filling out a ballot correctly. The burden of going to a polling place. The burden of requesting an absentee ballot correctly." *DSCC* at *10. "[W]e are not persuaded that the obligation to provide a few items of personal information on an absentee ballot application is

unconstitutional, thereby forcing us to rewrite Iowa's election laws less than a month before the election." *Id.*

Obtaining information from the voter him or herself, rather than having it supplied by an election official, is a modest requirement. "Arguably, blank forms help ensure that the person submitting the request is the actual voter. Iowans encounter this line of thinking every day." *Id.* at *7. This Court correctly recognized this familiar information security practice is comparable to what Iowans routinely encounter in other contexts. "For example, to do many debit card or credit card transactions, it is necessary for the consumer to enter personal information such as the person's address, ZIP code, or PIN. The card company already has this information; the only reason to ask for it is to ensure that the person doing the transaction is the actual cardholder." *Id.*

This Court properly recognized the fit between the modest requirement that a voter provide information for an ABR form and the generous provisions in Iowa law for the return of the ballot. "Iowa law, unlike the laws of some other states, does not require the absentee ballot to be *returned* by the voter (or a member of the voter's family)." *Id.* (emphasis original). "Thus, requiring the applicant to complete certain personal information on the absentee ballot application form helps ensure that the ballot (which virtually anyone in Iowa can return) was *requested* by the voter." *Id.* (emphasis original).

The obligation on the part of a voter to correctly provide information to election officials to request a ballot is no more difficult than the many other tasks that are a routine part of voting. As noted just days ago by the Eleventh Circuit in staying a district court injunction that would have required election officials to count absentee ballots submitted after the statutory deadline, "[v]oters must simply take reasonable steps and exert some effort to ensure that their ballots are submitted on time, whether through absentee or in-person voting." *New Georgia Project* v. *Raffensperger*, 2020 WL 5877588 at *6 (11th Cir. Oct. 2, 2020). "Contrary to the district court's conclusion, then, no one is 'disenfranchised.' And the burden on a voter to ensure that a ballot is postmarked by Election Day is not meaningfully smaller than the burden of, say, dropping the ballot in a drop box at one's polling place on Election Day." *Id.*

LULAC wages a broad attack on H.F. 2643's alleged disparate impact. Yet it offers no evidence that the law was intended to have this result. This is fatal to its equal protection claims. *Washington* v. *Davis*, 426 U.S. 229 (1976). "The Fourteenth Amendment does not regard neutral laws as invidious ones, even when their burdens purportedly fall disproportionately on a protected class. A fortiori it does not do so when, as here, the classes complaining of disparate impact are not even protected." *Crawford*, 553 U.S. at 207 (Scalia, J. concurring).

LULAC scoffs at the legislature's rationale for forbidding election officials from guessing at the answers for incomplete ABR forms. And it practically demands that the Secretary of State and intervenors produce a list of election fraudsters before being permitted to defend the statute. But "[f]or regulations that are not unduly burdensome, the *Anderson-Burdick* analysis never requires a state to actually *prove* 'the sufficiency of the "evidence".'" *Ohio Democratic Party* v. *Husted*, 834 F.3d 620, 632 (6th Cir. 2016) (emphasis in original). "Rather, at least with respect to a minimally burdensome regulation triggering rational-basis review, we accept a justification's sufficiency as a 'legislative fact' and defer to the findings of [the] legislature so long as its findings are reasonable." *Id.* Measures which eliminate even the "appearances of fraud" are justified. *Id.* at 633. "[A] state's 'electoral system cannot inspire public confidence if no safeguards exist to deter or detect fraud or to confirm the identity of voters.'" *Id.* (citing *Crawford*, 533 U.S. at 197). And legislatures "should be permitted to respond to potential deficiencies in the electoral process with foresight rather than reactively." *Munro* v. *Socialist Workers Party*, 479 U.S. 189, 195 (1986).

A particular mix of election rules and promotion of voting is not required by the Constitution, for states are free to strike their own balance. *Luft,* 963 F.3d at 671 ("A state with liberal access to absentee ballots may well offset this with more stringent verification of eligibility. Another, concerned about the effects of

late-breaking information, may favor a system with a shorter (or no) window for early voting."). The evaluation of these laws must not unduly focus on abnormal burdens of compliance experienced by a small group of voters. *Crawford*, 553 U.S. at 200, 205. And legislatures must be free to refine their laws, even if the process is considered by some to go in the wrong direction. *Ohio Democratic Party*, 834 F.3d at 623 ("Adopting plaintiffs' theory of disenfranchisement would create a 'one-way ratchet' that would discourage states from ever increasing early voting opportunities, lest they be prohibited by federal courts from later modifying their election procedures in response to changing circumstances.") The decision of the Iowa legislature to prohibit election clerks from guessing about incomplete information on ABR forms is nothing more than "a withdrawal or contraction of just one of many conveniences that have generously facilitated voting participation." *Id.* at 628.

Nor does the Iowa Constitution require a specific mix of election rules. The Iowa Constitution grants the right to vote to all inhabitants over the age of 21, but not without certain procedural limitations. Iowa Const., Art. II, § 1. For example, the constitution permits the legislature to impose residency requirements not exceeding "six months in this state and sixty days in the county." *Id.* The constitution disqualifies from voting "persons adjudged mentally incompetent to vote" and "a person convicted of any infamous crime."

Iowa Const., Art. II, § 5. This last provision led to the most recent and significant case from this Court considering voting rights. The teachings of that case further undermine LULAC's claims.

A convicted felon challenged the enforcement of Iowa Code § 39.3(8), a statute that provided that any person convicted of a felony offense could not vote. *Griffin* v. *Pate*, 884 N.W.2d 182 (Iowa 2016). *Griffin* considered whether the legislature's definition was valid. Were all felonies infamous crimes? Griffin argued that only those felonies which were an affront to democratic governance should qualify. This Court disagreed: "In the end, we are constrained to conclude that all objective indicia of today's standard of infamy supports the conclusion that an infamous crime has evolved to be defined as a felony. This is the community standard expressed by our legislature and is consistent with the basic standard we have used over the years. It is also consistent with the constitutional history, text, and purpose of the provision." *Id.* at 205.

This Court also rejected the argument that the infamous-crime definition was susceptible to attack because of claimed racial disparities it caused. "Yet this outcome is tied to our criminal justice system as a whole and is not isolated to the use of the infamous-crime standard…no evidence suggests this state adopted or maintained infamy to discriminate against minority groups." *Id.* at 203. In

other words, without evidence of purposeful discrimination, a voting regulation cannot be attacked on the basis of alleged disparate outcomes.

Griffin teaches that when considering a challenge to a neutral and nondiscriminatory election law, courts do not weigh the burdens of the standard against the circumstances of individual voters. Instead, they apply the standard imposed by law in a uniform manner. And for equal protection claims, disparate outcomes are relevant only if a plaintiff introduces evidence of discriminatory intent. *Griffin* weighs heavily against LULAC's case.

LULAC cited below the concerns of some county auditors about the burdens of administering H.F. 2643. But this raises no constitutional issue. "Some of the district court's analysis of [hours of voting reductions] reflects the assurance of several municipal clerks that their offices have the resources to handle additional hours of early voting. Yet, as far as national government is concerned, which decisions a state wishes to make statewide, and which locally, are for the state to decide." *Luft,* 963 F.3d at 674. "That some local clerks may disagree with the state's approach does not permit them to enlist a federal court to override the state's judgment about how public employees' time should be allocated." *Id.*

It is also worth noting that LULAC did nothing before the hearing on their motion for temporary injunction to supplement its factual assertions in light of the experience processing ABR forms under the new law. LULAC submitted

declarations describing predictions about how the law would work. It failed to supplement the declarations with any kind of description about how implementation *actually* occurred. As explained above, Iowans are voting absentee at a record pace. Whatever effects H.F. 2643 is having on absentee voting, a reduction in validly submitted requests is nowhere to be seen.

Much of LULAC's factual assertions in support of their request cast H.F. 2643 in partisan terms. Essentially, it argues that election laws are valid only if adopted by broad majorities and only if they reduce scrutiny of voters, documents, or the process. Not so. Policy decisions often have political consequences, but that does not make every policy decision subject to court review. *Rucho* v. *Common Cause*, 139 S.Ct. 2484, 2498-2502 (2019) (finding partisan gerrymandering to present nonjusticiable political question). Indeed, shifting political majorities often enact new rules and regulations. "If one party can make changes that it believes help its candidates, the other can restore the original rules or revise the new ones. The process does not include a constitutional ratchet." *Luft*, 963 F.3d at 670.

"[I]f a movant fails to meet this threshold inquiry [of likelihood of success on the merits] the court need not consider the other factors." *Disney Enterprises, Inc.* v. *VidAngel, Inc.*, 869 F.3d 848, 856 (9th Cir. 2017) (construing provisions for grant of preliminary injunction under federal rules of procedure). But in the

context of elections this rule is modified: ordinarily courts should deny a temporary injunction during or shortly before an election *even if the claim has merit*. We will explore this next.

II. Courts should not change election rules during or shortly before an election. County auditors, who are enforcing H.F. 2643, started mailing ballots on October 5 and will continue to do so until October 24, 2020. Should this Court enjoin H.F. 2643 while Iowans are voting and change the election rules for those voters who have not yet received a ballot?

A. Preservation for appellate review.

LULAC filed a motion for temporary injunction and timely sought permission for an interlocutory appeal. RNC does not contest that the claims it raised in its motion that were ruled on by the district court are preserved for review.

B. Standard of review.

As noted above, the decision to issue or refuse a temporary injunction is reviewed for an abuse of discretion. This rule is modified in the election context.

C. Courts should not change election rules shortly before or during an election.

This Court has recognized the inadvisability of court intervention in election procedures on the eve of Election Day. "[W]e are not persuaded that the obligation to provide a few items of personal information on an absentee ballot application is unconstitutional, thereby forcing us to rewrite Iowa's election laws less than a month before the election." *DSCC* at *10 (citing *Republican Nat'l Comm.* v. *Democratic Nat'l Comm.*, 140 S. Ct. 1205 (2020) (per curiam) "This Court has repeatedly emphasized that lower federal courts should ordinarily not alter the election rules on the eve of an election.")

Confusion by voters is a real concern. *Id.* at *11 (warning of danger of "judicially created confusion.") "Court orders affecting elections, especially conflicting orders, can themselves result in voter confusion and consequent incentive to remain away from the polls." *Purcell* v. *Gonzalez*, 549 U.S. 1, 4-5 (2006) (per curiam). LULAC and its allied groups have already sown confusion by collaterally attacking temporary injunctions which sought to force three county auditors to obey a Secretary of State elections directive that was greatly informed by the requirements of H.F. 2643. Those temporary injunctions protect and promote a uniform election system. *DSCC* at *11-12 ("The Polk County

District Court's…order throws that prior clarity into doubt, particularly in light of its late timing.")

And, LULAC has not aided its own cause by its litigation strategy. As noted above, the petition was filed on July 14, 2020. Nearly a month lapsed before LULAC moved on August 10 for a temporary injunction. Strangely, LULAC filed its resistance to the RNC intervention motion on August 6, four days before it sought a temporary injunction. This expression of priorities does not reflect well on any sense of urgency LULAC now brings to this Court.

The scheduling of the district court's consideration of the motion for temporary injunction must also be considered. LULAC was clearly frustrated by the September 23 hearing date and unsuccessfully asked the district court to move it to an earlier date. Clearly, the district court might have juggled priorities in a different way to accommodate an earlier hearing. But LULAC did nothing to force the issue. It was free at any time to ask a Justice of this Court for a temporary injunction. Iowa R. Civ. P. 1.1506(2) (authorizing a temporary injunction to be granted by "[t]he supreme court or a justice thereof.") LULAC did not need to wait for the Johnson County court schedule to accommodate a hearing. This case was obviously headed to this Court one way or another. LULAC did nothing to move it there in an expeditious manner.

Plaintiffs seek to challenge a law which is currently being enforced for the 2020 general election. Iowa voters are sending ABR forms to their county auditor and will do so for another eight days. If those forms are incomplete or incorrect, the auditors are following Iowa law by contacting voters to obtain the correct information. On October 5, 2020, auditors began mailing out absentee ballots in response to this activity. Iowa Code § 53.10. This is exactly the kind of circumstance where the Supreme Court has cautioned against changing election rules by court order.

Consider the actions of the U.S. Supreme Court just last week. It stayed a federal district court order enjoining South Carolina's witness requirement for absentee ballots in part because the injunction was entered "shortly before the election" and thereby "defied" the *Purcell* principle. *Andino v. Middleton*, No. 20A55, 592 U.S. __ (U.S. Oct. 5, 2020) (Kavanaugh, J., concurring). The Fifth Circuit's most recent examination of *Purcell* and *Republican National Committee* is also instructive. In *Texas Alliance for Retired Americans* v. *Hughs*, 2020 WL 5816887 (5th Cir. Sept. 30, 2020) the court granted a stay of a temporary injunction blocking enforcement of Texas law on straight-ticket voting. "In its order, the district court contends *Republican National Committee* is distinguishable…[it] reasons that its injunction would be issued far earlier, would not extend any deadlines, and would not create the confusion [*RNC*] frowns upon. This

reasoning is deeply flawed." *Id.* at *5-6. The election rules, as determined by the legislature, are the status quo that lower courts should maintain. *Id.* at 7.

The Eleventh Circuit reached the same conclusion. "Since March, the Supreme Court has reviewed, by our count, seven emergency motions related to district court injunctions of state election laws due to COVID-19. In six of those cases it has stayed the injunction or declined to vacate a stay issued by the circuit court. And in the one case where the Court denied the application for a stay, it did so only because the state officials and the plaintiffs had already agreed to settle the case." *New Georgia Project*, 2020 WL 5877588 at *8-9. "And we are not on the eve of the election–we are in the middle of it, with absentee ballots already printed and mailed. An injunction here would thus violate *Purcell*'s well-known caution against federal courts mandating new election rules–especially at the last minute." *Id.* at *9.

There was no reason for the district court to examine *Purcell* and *Republican National Committee*–its finding that LULAC could not demonstrate a likelihood of success made it unnecessary. LULAC simply ignored the issue in their brief and derided its application at the hearing on the motion for temporary injunction. But they cannot wish away the implications of *Purcell* and *Republican National Committee*. Regardless of the merits, an injunction should not be issued.

Conclusion

The district court's order denying a temporary injunction should be affirmed.

Request for Nonoral Submission

Intervenors-Appellees understand that this Court intends to decide this appeal on an expedited basis and believe that oral argument is not necessary. If the Court decides to order argument, intervenors-appellees wish to participate.

Certificates of Cost and Compliance

Intervenors-Appellees have not expended any printing costs in the preparation of this brief.

This brief complies with the type-volume limitation of Iowa R. App. Pro. 6.903(1)(g)(1) because it contains **5248** words, excluding parts of the brief exempted by that rule.

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/s/ Alan R. Ostergren
Attorney for Intervenors-Appellees