

IN THE SUPREME COURT OF IOWA

DSCC, DCCC, and the IOWA
DEMOCRATIC PARTY,

Petitioner-Appellees,

v.

IOWA SECRETARY OF STATE
PAUL PATE, in his official
capacity,

Respondent-Appellant.

Sup. Ct. No. _____
Polk County No. CVCVo60641
Polk County No. CVCVo60642

**APPLICATION FOR
INTERLOCUTORY APPEAL
AND MOTION FOR
EMERGENCY STAY**

Expedited Relief Requested
Immediate Stay Requested

District Court Order requires
compliance by October 6, 2020

COME NOW Respondent-Appellant Iowa Secretary of State Paul Pate, and in support of his Application for Interlocutory Appeal and Motion for Emergency Stay states as follows:

APPLICATION FOR INTERLOCUTORY APPEAL

1. On July 17, 2020, Respondent-Appellant Iowa Secretary of State Paul Pate issued an emergency election directive pursuant to Iowa Code section 47.1(2)(a). The directive was approved unanimously by the bipartisan Iowa Legislative Council. The directive has four sections. Section one authorizes federal CARES Act funds to mail an official absentee ballot request form to all active registered

voters in Iowa for the upcoming general election. Section two permits county auditors to send only a blank official absentee ballot request form. Section three allows UOCAVA voters to electronically transmit absentee ballots. Section four waives certain absentee deadlines for Iowans admitted to health care facilities.

2. On July 20, 2020, after the emergency election directive was issued, auditors in Linn, Johnson, and Woodbury counties began mailing absentee ballot request forms that had been pre-filled—in other words, that were nearly completed by the auditors and needed only a signature from the voter—in defiance of the Secretary’s directive and Iowa law.

3. A group of plaintiffs, referred to herein collectively as “the Republicans,” sued those auditors in Linn, Johnson, and Woodbury counties. In each case, the district court held that distributing pre-filled absentee ballot request forms violated the law and enjoined the auditors from accepting them upon return. *See Order, Republican National Committee, et al. v. Miller*, Linn County No. EQCV095986 (Iowa D. Ct. Aug. 27, 2020) (attached as Exhibit 1); *Order, Republican National Committee, et al. v. Weipert*, Johnson County No. EQCV081957 (Iowa D. Ct. Sept. 12, 2020)(attached as Exhibit 2);

Order, *Republican National Committee, et al. v. Gill*, Woodbury County No. EQCV193154 (Iowa D. Ct. Aug. 28, 2020) (attached as Exhibit 3). The rulings also required the auditors to notify voters who returned pre-filled absentee ballot request forms that the auditors could not accept them and invite the voter to submit an absentee ballot request in the manner prescribed by the Secretary. *See id.* It is worth noting that all of the voters who received the pre-filled absentee ballot request forms also received a proper blank request form from the Secretary's statewide mailing.

4. This Court denied interlocutory appeals in the Linn and Woodbury County cases. *See Order, Republican National Committee et al. v. Miller*, Sup. Ct. No. 20-1140 (Sept. 16, 2020) (attached as Exhibit 4); *Order, Republican National Committee et al. v. Gill*, Sup. Ct. No. 20-1169 (Sept. 16, 2020) (attached as Exhibit 5). As of the time of this filing, no application for interlocutory appeal is pending in the Johnson County case.

5. Importantly, the district court in those cases concluded that, even in the absence of the directive, Iowa law prohibits pre-filled absentee ballot requests: "It is implausible to conclude that near total completion of an absentee ballot application by the auditor is

authorized under Iowa law where the legislature has specifically forbidden government officials from partially completing the same document.” See Order P.7, *Republican National Committee, et al. v. Miller*, Linn County No. EQCVO95986 (Iowa D. Ct. Aug. 27, 2020) (attached as Exhibit 1); Order P.9, *Republican National Committee, et al. v. Weipert*, Johnson County No. EQCVO81957 (Iowa D. Ct. Sept. 12, 2020) (attached as Exhibit 2) (same); Order P.17, *Republican National Committee, et al. v. Gill*, Woodbury County No. EQCV193154 (Iowa D. Ct. Aug. 28, 2020) (attached as Exhibit 3) (“While it does appear that there is no statutory or other prohibition preventing a county commissioner from mailing ABR out on their own initiative, Iowa Code Section 53.2(4) would appear to prohibit the sending of prepopulated forms to voters. Section 53.2(4) requires that for a voter to request an absentee ballot, the voter ‘shall provide’ their name and signature, their date of birth, address and voter verification number. If these pieces of information are already preprinted on the ABR form it would seem impossible that this information is being provided by the voter, it would in effect be being provided by the County Auditor whose job it is to ensure that the information provided is accurate to prevent possible fraudulent use of

the absentee ballot. As such the Court finds that the issuance of ABR's with prepopulated information would violate Iowa Code Section 53.2(4) as the identifying information is not being provided by the voter.”).

6. After district courts in Linn, Woodbury, and Johnson counties enjoined those county auditors from accepting returned pre-filled absentee ballot requests, Petitioner-Appellants (hereinafter collectively referred to as “the Democrats”) filed a petition for judicial review and a petition at law and in equity in Polk County challenging the Secretary’s directive. Shortly thereafter, the Democrats filed a motion for a stay in the judicial review action and a motion for a temporary injunction in the civil case.

7. The parties appeared for a hearing on both motions on September 18, 2020. The Secretary argued that his emergency election directive was a valid exercise of his powers under the Iowa Code, that the Democrats lacked standing to assert the home rule authority of county auditors, and that an injunction in Polk County would not benefit voters in Linn, Johnson, and Woodbury counties who returned pre-filled absentee ballot requests and now must send

new absentee ballot requests, because those auditors are prohibited from accepting such requests by separate court order.

8. The district court, on October 5, 2020, granted the Democrats request to stay the directive. *See* Ruling 10/5/20 (attached). The district court did not address the arguments concerning the legality of the directive itself, concluding that “there are clearly strong arguments, supported by authority, on both sides.” Ruling P.14. Rather, the district court stayed the directive based on potential harm to the Democrats and to voters in Linn, Johnson, and Woodbury counties as a result of those auditors’ inability to accept returned pre-filled absentee ballot requests. Ruling P.10-12.

9. In response to the Secretary’s argument that a stay in Polk County would not help voters in Linn, Johnson, and Woodbury counties because of the active court orders, the district court said that “while the Court is not suggesting that the Linn County, Johnson County, or Woodbury County auditors would intentionally violate the terms of a lawfully entered injunction, the fact remains that the subject injunctions are not self-enforcing and enforcement of the same would require some affirmative action by Secretary Pate or the parties who actually obtained those injunctions.” Ruling P.11-12. That

is not correct. All three district court rulings prohibit the Linn, Johnson, and Woodbury county auditors from accepting and issuing ballots in response to returned, pre-filled absentee ballot requests and require them to contact voters and inform them that they must send a new absentee ballot request form. *See* Order P.9, *Republican National Committee, et al. v. Miller*, Linn County No. EQCV095986 (Iowa D. Ct. Aug. 27, 2020) (attached as Exhibit 1); Order P.15, *Republican National Committee, et al. v. Weipert*, Johnson County No. EQCV081957 (Iowa D. Ct. Sept. 12, 2020)(attached as Exhibit 2); Order P.21, *Republican National Committee, et al. v. Gill*, Woodbury County No. EQCV193154 (Iowa D. Ct. Aug. 28, 2020) (attached as Exhibit 3). No action by the Secretary or the Republicans is necessary to enforce those injunctions.

10. The district court further concluded that concerns raised by the Secretary about “fairness and uniformity of the absentee ballot application process” were “far outweighed by the public’s interest in maximizing voter participation in the upcoming general election, and, in particular, doing so by making absentee voting as easy and widely available as possible.” Ruling P.15-16.

11. Interlocutory appeal is appropriate and necessary because the district court's order does nothing to maximize voter participation or to make absentee voting easier or more widely available. In fact, it may have the opposite effect.

12. Nothing in the record suggests that any county auditor other than those in Linn, Johnson, and Woodbury counties has sent or intends to send anything other than the blank official absentee ballot request form to voters. And, as the district court acknowledges, it has no authority to dissolve the injunctions prohibiting the auditors in Linn, Johnson, and Woodbury county from accepting returned pre-filled absentee ballot requests. Ruling P.13. As a result, the order staying the enforcement of section two of the directive does not affect any county's absentee ballot request forms. But, if the Secretary is required to inform county auditors that "enforcement" of section two of the directive is stayed, voters in Linn, Johnson, and Woodbury counties who already returned a pre-filled absentee ballot request might incorrectly conclude that they do not have to submit a new absentee ballot request, despite the fact that those auditors are prohibited by court order from accepting returned pre-filled absentee ballot requests.

MOTION FOR IMMEDIATE STAY

13. The district court ordered the Secretary to inform all county auditors of the stay of enforcement of section two of the directive within one business day of the entry of the order.

14. Because the order was entered on October 5, 2020, he Secretary must so inform the county auditors by October 6 to comply with the order. For the reasons outlined above, possible voter confusion could result from the Secretary's compliance with the order even if interlocutory appeal is granted and the district court order is reversed. At that point, the damage may already have been done.

15. Absentee ballot request forms must be received in the county auditors' offices by 5 p.m. on October 24 for the upcoming general election. Voters in Linn, Johnson, and Woodbury counties who returned pre-filled absentee ballot request forms and mistakenly believe they do not have to submit new absentee ballot request forms as a result of the district court's order could lose the opportunity to do so if the district court's order is not immediately stayed while this Court considers the application for interlocutory appeal. For that reason, the Secretary requests an immediate stay of the district court

order while this Court considers the application for interlocutory appeal pursuant to Iowa Rule of Appellate Procedure 6.104(1)(f).

WHEREFORE, Respondent-Appellant Iowa Secretary of State Paul Pate requests that this Court immediately stay the district court's order and grant interlocutory appeal.

Respectfully submitted,

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