

IN THE IOWA DISTRICT COURT FOR JOHNSON COUNTY

LEAGUE OF UNITED LATIN,)	
AMERICAN CITIZENS OF IOWA; and)	
MAJORITY FORWARD,)	No. _____
Plaintiffs,)	
)	
vs.)	
)	PETITION IN LAW AND
IOWA SECRETARY OF STATE)	EQUITY
PAUL PATE, in his official capacity,)	
Defendant.)	

COME NOW Plaintiffs League of United Latin American Citizens of Iowa (“LULAC”) and Majority Forward (collectively “Plaintiffs”) praying for temporary and permanent injunctive relief restraining Defendant Iowa Secretary of State Paul Pate (the “Secretary”) from enforcing and implementing Section 124 of House File 2643 (2020) (“HF 2643”), as well as a declaratory judgment that implementing that provision of HF 2643 violates the Iowa Constitution, and other relief described below, and in support thereof state the following:

STATEMENT OF THE CASE

1. Plaintiffs bring this suit to challenge an abrupt and unnecessary change to the procedure by which County election officials process absentee ballot requests that makes absentee voting in Iowa more complicated, cumbersome, confusing, expensive, and time-consuming for both voters and election officials, without any adequate justification for doing so. This change burdens the right to vote of significant numbers of Iowans who apply for absentee ballots and increases the risk of complete disenfranchisement.

2. Specifically, Plaintiffs challenge a provision in the newly enacted HF 2643 that prohibits election officials from using the information readily available to them in the voter registration database to fill in any information missing from a voter’s absentee ballot request, even

if they have sufficient information to identify the voter. Instead, HF 2643 mandates a cumbersome and lengthy process requiring county election officials to contact the voter directly by phone or e-mail—if the voter’s phone number or e-mail address is even available—to obtain that information. If the election official is unable to reach the voter by phone or e-mail, the election official must mail a letter to the voter requesting the additional information. In an election year when mail delays are anticipated to become increasingly common and elections officials will already be overtaxed attempting to process substantially more absentee ballot requests than usual, this additional—and entirely unnecessary (as well as irrational and illogical)—hurdle for obtaining an absentee ballot will only lead to unnecessary delay and substantially increase the risk of disenfranchisement of entirely eligible, lawful Iowa voters.

3. The Secretary previously attempted to burden voters with a similar prohibition in November 2017, when the Secretary promulgated a regulation that provided that county election officials may not use the voter registration system to obtain the voter’s verification number—Iowa driver’s license or non-operator identification number, or four-digit voter identification number (“Voter PIN”) (collectively, the “Absentee ID Number”—if that information was missing from the voter’s application. Iowa Admin. Code 721—21.306(53) (the “Secretary’s 2017 Rule”). Instead, the official was required to “contact the voter directly by mail, e-mail, or telephone or in person” to “verify the voter’s identity.” This rule was in effect for the Iowa primary elections in June 2018, during which many eligible, lawful Iowa voters who submitted absentee ballot requests, such as those temporarily residing outside of the state, were disenfranchised as a direct result. Because county election officials could not use the voter registration database to look up Absentee ID Numbers, voters received mailings too late to return their absentee ballots before Election Day. Some voters received no notification at all that information was missing and, as a result, never

received the absentee ballot that they requested (and to which they were entitled). Finding that this prohibition raised a new irrational, illogical, and wholly unjustifiable barrier to the ballot and burdened Iowans' right to vote, the Iowa District Court for Polk County permanently enjoined enforcement of the rule.

4. Just as the court found the Secretary's 2017 Rule an unjustifiable burden on the right to vote, HF 2643 also cannot survive scrutiny. County election officials do not have phone and e-mail contact information for many voters, as a substantial amount of e-mail addresses and phone numbers in the voter registration database are invalid. Further, voters are not required to provide phone numbers and e-mail addresses when requesting their absentee ballots. Indeed, many voters refuse to do so to protect their privacy. Thus, county election officials must send deficiency notices to countless voters, requiring voters to wait to receive a letter in the mail before they are able to cure their requests and receive an absentee ballot. This delayed notification leads to delays in absentee ballot mailing and increases the risk that voters will not receive an absentee ballot with enough time to return them, if they receive one at all.

5. This unnecessary barrier to absentee voting would be overly burdensome during ordinary times. But these are not ordinary times. Over the past six months, life in the United States and in Iowa has changed dramatically as a result of the highly infectious, novel, coronavirus ("COVID-19"), which, as of the date of this filing, has infected over 3.1 million and killed over 130,000. As of July 13, 2020, Iowa has confirmed over 35,500 cases and over 750 deaths since the pandemic reached the United States. In the last week, Iowa has seen a twelve percent increase in the number of confirmed cases.

6. Public health officials warn that the pandemic will continue into November 2020, certainly—and that a second, more devastating wave is likely to coincide with both flu

season and the November 2020 General Election (“November General”). Indeed, the pandemic is widely anticipated disrupt American life well into 2021, and perhaps even 2022.

7. As a result of the new and immediate dangers to their health presented by in-person contacts, including in-person voting, more and more voters are understandably turning to absentee voting to safely exercise their right to vote. Iowa is no exception; its June 2, 2020 primary election (“June Primary”) saw record-shattering numbers of absentee ballot requests and absentee ballots cast. Iowa voters (and election officials) should not have to choose between voting and risking their personal health. But instead of ensuring that access to absentee voting in Iowa remains unfettered, by passing HF 2643 the Iowa Legislature has made it unnecessarily, irrationally, and illogically more difficult, for no justifiable reason.

8. HF 2643 also introduces unconstitutional differential treatment of voters across Iowa’s 99 counties and even within counties. Due to the ongoing pandemic, elections officials are becoming increasingly inundated with absentee ballot requests from voters who have not previously voted absentee; these voters, who are less familiar with the process, are more likely to make a mistake in filling out their forms. These counties have developed varying methods of combating HF 2643’s burden on voters and themselves. For example, some counties plan to send prefilled in absentee ballot requests to voters, others may hire extra help to process requests under HF 2643, and some will not do any of these things, or lack the resources to so.

9. HF 2643 will abridge the right to vote and prevent qualified voters from participating in Iowa elections by making it more difficult to cast absentee ballots. But it also makes the process more confusing and uncertain, especially for the high number of voters who are voting absentee for the first time this election. Voters who are notified too late or not at all will be effectively denied their right to vote safely in the November General. Some will be forced to

choose between their health or their right to vote, as voting in person will be their only remaining option. Others who cannot vote in person for a variety of reasons, including their schedules, disabilities, temporary absence from the State, or fears for their health or the health of their loved ones, will not be able to vote at all. HF 2643 places an undue burden on the fundamental right to vote and violates Article II, Section 1 and Article I, Sections 6, 7, and 9 of the Iowa Constitution. The challenged provision should accordingly be declared unconstitutional and permanently enjoined.

JURISDICTION AND VENUE

10. This Court has jurisdiction under Iowa Code § 602.6101.
11. Venue in Johnson County is proper under Iowa Code § 616.3(2) because the cause or some part thereof arose in the county.

PARTIES

12. Plaintiff League of United Latin American Citizens (“LULAC”) of Iowa has its business address at 2463 E. Highview Dr., Des Moines, Iowa, 50320. LULAC has approximately 150,000 members throughout the United States and Puerto Rico, and more than 600 members in Iowa. It is the largest and oldest Latino civil rights organization in the United States. LULAC advances the economic condition, educational attainment, political influence, health, housing, and civil rights of all Hispanic nationality groups through community-based programs operating at more than 1,000 LULAC councils nationwide. LULAC of Iowa is comprised of 22 Councils located throughout the State of Iowa. The members and constituents of LULAC of Iowa and each of its councils include voting-age Latino citizens of Iowa who are more likely than other members of the electorate to be burdened—and in some instances prevented entirely from casting an absentee ballot that will be counted in Iowa’s elections—by HF 2643. LULAC of Iowa must also

divert substantial resources and attention from other critical missions to deal with the adverse impacts the challenged provision will have on its members and constituents, and to assist them in attempting to surmount the barriers to voting imposed by the challenged provision. Because of HF 2643, LULAC of Iowa has suffered and will continue to suffer irreparable harm. Unless set aside, the State's enforcement of this provision will inflict injuries for which LULAC of Iowa has no adequate remedy at law.

13. Plaintiff Majority Forward has its business address at 700 13th Street NW, Suite 600, Washington, D.C. 20005. Majority Forward is a not-for-profit 501(c)(4) organization created to support voter registration and voter turnout efforts. Its primary mission is to encourage full participation by voters in our election process, including in Iowa. Majority Forward has made and will continue to make contributions and expenditures in the millions of dollars to educate, mobilize, and turn out voters in the upcoming state and federal elections around the country. In particular, Majority Forward has committed to spending \$3 million or more on voter engagement efforts in Iowa anticipation of the 2020 election. Majority Forward plans to pay for organizers on the ground in Iowa. These organizers will work with local activists and organizations on projects designed to engage activists and voters in the political process. Majority Forward must also divert substantial resources and attention from other critical missions to deal with the adverse impacts the challenged provision will have on its members and constituents, and to assist them in attempting to surmount the barriers to voting imposed by the challenged provision. Because of the challenged provision, Majority Forward has suffered and will continue to suffer irreparable harm. Unless set aside, the State's enforcement of this provision will inflict injuries for which Majority Forward has no adequate remedy at law.

14. Defendant Paul Pate is the Iowa Secretary of State and is named as a Defendant in his official capacity (“the Secretary”). He is the chief election official, the state commissioner of elections, and the state registrar of voters of Iowa and, as such, is responsible for the administration of elections. *See Iowa Code §§ 47.1(1)-(3), 47.7(1).* His responsibilities include, but are not limited to, setting forth “uniform election practices and procedures” and supervising local election officials regarding the proper methods of conducting elections. *Id.* § 47.1(1)-(3).

FACTUAL ALLEGATIONS

I. Absentee voting in Iowa requires several steps to successfully obtain and cast a ballot.

15. Iowa law does not require voters to provide an excuse to vote absentee; it is an option available to every eligible voter. Iowa Code § 53.2(1)(a).

16. To receive an absentee ballot, Iowa voters must complete an absentee ballot request containing certain information, including their date of birth, permanent address, and the voter’s verification number. The voter verification number is a voter’s Iowa driver’s license non-operator identification number, or the Voter PIN (again, collectively, the “Absentee ID Number”). For those Iowans who do not have an Iowa-issued driver’s license or non-operator ID, the county election officials mail such voters a Voter Identification Card (“Voter ID Card”) which contains their Voter PIN.¹ *See Iowa Code § 53.2.*

17. The Secretary provides a “State of Iowa Official Absentee Ballot Request Form” on its website. That form asks voters to fill in their 1) full name; 2) date of birth; 3) Absentee ID Number; 4) Iowa residential address; 4) address to mail the absentee ballot if different from the voter’s residential address; 5) phone number and e-mail address; 6) election date or type; and 7)

¹ Any registered voter can request a Voter ID Card, regardless of whether they have an Iowa-issued driver’s license or non-operator’s ID. Findings of Fact, Conclusions of Law, and Order, *League of United Latin Am. Citizens v. Pate*, No. CVCV056403 (Polk Cty. Dist. Ct. Sept. 30, 2019).

an affidavit attesting “I swear or affirm that I am the person named above and I am a registered voter or I am entitled to register at the address listed on this form. I am eligible to receive and vote an absentee ballot for the election indicated above.”²

18. Nowhere on the Secretary’s form does it say certain information such as the Absentee ID Number, date of birth, or permanent address are required to receive an absentee ballot.

19. Iowans seeking to vote absentee for any given election may submit absentee ballot requests to local election officials between 120 days and 10 days before the election. Iowa Code § 53.2(1)(a), (b). But election officials can send absentee ballots to voters no earlier than 29 days before Election Day. Iowa Code § 53.8(1)(a).

20. In past elections, if a county election official received an absentee ballot request omitting required information, such as an Absentee ID Number, the official was able to use “the best means available” to fill in this information for the voter. In practice, election officials would quickly refer to the voter registration database to locate the missing information, process the request, and mail out the absentee ballot to the voter.

21. Once the ballot request is reviewed and verified, the county election official mails the absentee ballot to the address included on the request.

22. Absentee voting requires steps that must be taken well in advance of Election Day to ensure that a voter’s ballot is counted. A voter must repeat these steps each year they wish to vote absentee. In other words, there is no permanent absentee voting list. If a voter is not aware of each of these steps sufficiently prior to Election Day, or if they are not able to successfully take each of them for whatever reason, they will not be permitted to vote absentee.

² Office of the Iowa Secretary of State, *State of Iowa Official Absentee Ballot Request Form* (revised October 2019), <https://sos.iowa.gov/elections/pdf/absenteeballotapp.pdf>.

23. As a result, absentee voting has traditionally been less accessible to new voters, voters who participate more infrequently in elections and thus have less familiarity with the elections process, as well as other groups of voters who tend to have less information about the voting process in general or absentee voting specifically, including younger voters, voters for whom English is a second language, and voters in minority communities.

24. The steps involved in successfully completing an absentee ballot request, which are prerequisites to voting absentee, are not insubstantial and often require voters to expend significant time and effort to complete. A misstep or delay at any point by the elections officials increases the risk of complete disenfranchisement.

II. More than ever, Iowans are turning to absentee voting to participate in elections.

25. Absentee voting in Iowa has become more popular in recent elections. During the 2000 general election, 21.2% of votes in Iowa were cast by absentee ballot. This figure increased to 41.3% of votes cast by absentee ballot in the 2016 general election. Similarly, 40.5% of votes were cast by absentee ballot in the 2018 general election.

26. The onset of the current pandemic has greatly accelerated the shift to absentee voting in Iowa, such that in the June 2, 2020 primary (“June 2 Primary”), Iowans overwhelmingly voted absentee in the election: in total, over 79% of Iowans cast their ballots absentee—nearly twice the absentee voter turnout as compared to any past statewide election.

27. Because of the dangers that in-person voting currently pose to voters, elections officials, and poll workers as a result of the pandemic—specifically the threat that Iowans voting in person could spread or become infected with COVID-19 and the impossibility of safely conducting in-person voting at the scale it has been offered in the past—the Secretary mailed an absentee ballot request to every active registered voter in Iowa ahead of the June 2 Primary.

28. The Secretary publicly stated that he did so to “encourage[e] Iowans to vote by mail in the June 2 Primary to reduce the risk of spread of COVID-19.” And it worked.

29. In addition to setting a record for participation in an Iowa election through the use of absentee voting, the June 2 Primary set an all-time Iowa state record for turnout in a June primary election, with over 522,000 total ballots cast. That was a 16 percent increase from the previous Iowa record of 449,490 total votes cast in the 1994 June primary.

30. Iowans voting by absentee ballot were the main drivers of the record turnout. Over 420,000 Iowans cast a vote by absentee ballot in the June 2 Primary.

31. And, the June 2 Primary saw an eleven-fold increase in the number of absentee ballots as compared to the June 2016 primary election (at 38,000), a presidential election year. In all, over 490,000 Iowans requested an absentee ballot for the June 2 Primary.

III. Shortly after the June 2 Primary, the Iowa Legislature acted to make it harder for Iowans to successfully vote absentee, including by enacting HF 2643.

32. Less than a month after the June 2 Primary, the Iowa Legislature passed a new law forbidding Secretary Pate from sending absentee ballot requests to all active registered Iowa voters without explicit legislative approval. HF 2486 (2020).

33. About the same time, and in the final hours of the legislative session, the Legislature tacked on the ban challenged here, HF 2643, which was first introduced on June 10, 2020.

34. Before HF 2643, if any statutorily-required information was missing from an absentee ballot request, election officials were instructed to use the “best means available” to supply that information.

35. In practice, the “best means available” standard meant election officials would quickly look to the voter registration database and fill in any missing information for the voter.

This was particularly true for the Absentee ID Number, which was a common piece of information that voters either neglected to include or filled out incorrectly. Instead of writing their driver's license, non-operator ID, or Voter PIN on the absentee ballot request, many Iowa voters would input the last four digits of their Social Security numbers.

36. Before HF 2643, election officials were able to simply look at the database and fill in the proper Absentee ID Number and promptly process the request.

37. But HF 2643 changed that. As a result of its passage, elections officials are now prohibited from looking up missing or incorrect information using the voter database. HF 2643 § 124. While the bill does require that elections officials act quickly to contact the applicant by phone or e-mail to get the missing information, it ignores that not all voters include that information on their application forms (nor are they required to in order for the forms to be processed). If the election official does not reach the voter, or the election official has neither the voter's phone number or e-mail address, the election official must *mail* the voter a notice concerning the missing information. At no time may they simply solve the problem by referring to information already at their fingertips in the voter registration database, as they had for years past.

38. HF 2643 resembles an administrative rule Secretary Pate filed in November 2017 that similarly prohibited election officials from using their own voter registration system to obtain Absentee ID Numbers missing from absentee ballot requests.

39. Iowa Administrative Code rule 721–21.306(53) (2017) (or, the “Secretary’s 2017 Rule”) limited how “best means available” was to be interpreted in Iowa Code § 53.2(4)(b), stating, in relevant part, that “[b]est means available, for the purposes of this rule, means contacting the voter directly by mail, e-mail, or telephone or in person. Commissioners may not use the voter registration system to obtain the information.”

40. The Secretary's 2017 Rule unduly burdened and prevented qualified voters from voting absentee during the elections it was in effect, including the June 2018 Primary Election. Many eligible voters were prevented from submitting absentee ballot requests because they did not know their Absentee ID Number or how to find it. This confusion substantially reduced the number of voters who requested an absentee ballot at the outset. Of those that submitted requests, many included the wrong number, such as the last four digits of their Social Security number. Because election officials were not permitted to use the voter registration database and were instead required to contact the voter, many voters received notice too late to cast an absentee ballot for the June 2018 Primary. Some voters, such as those temporarily residing outside of the State, were completely disenfranchised.

41. The Secretary 2017 Rule was challenged in Iowa State Court and its enforcement was stayed and enjoined on July 24, 2018, in advance of the November election.³ The Rule was permanently enjoined on January 23, 2019,⁴ and the court held that prohibiting county election officials from using the voter registration database to obtain information missing Absentee ID Numbers was "unreasonable, arbitrary, capricious, and an abuse of discretion." The court found that it was "[i]t is therefore irrational, illogical, and wholly unjustifiable to proscribe one method of doing so that has been used for the last forty years."⁵ The Secretary dismissed his appeal of the injunction.

42. Without regard to the court's ruling on the Secretary's 2017 Rule, some Republican lawmakers justified the nearly-identical prohibition in HF 2643 as a means of

³ Ruling on Pet'rs. Mot. to Stay Agency Action, *League of United Latin Am. Citizens v. Pate*, No. CVCV056608 (July 24, 2018), at 12.

⁴ Ruling on Pet. For Judicial Review, *League of United Latin Am. Citizens v. Pate*, No. CVCV056608 (Jan. 23, 2019), at 9.

⁵ *Id.* at 5.

preventing voter fraud, even though there is a dearth of evidence that there is a significant number of fraudulent absentee ballot requests in Iowa, that fraudulently requested ballots are returned and counted without detection, or that the prohibition would prevent any such fraud.

43. Many county election officials vocally opposed the new requirement. Several officials even lobbied against its enactment. This included the Iowa State Association of County Auditors, a bipartisan group of election officials. County election officials oppose the requirement because they are aware that, as a practical matter, will not be able to contact all voters in a timely manner, adding further delay to absentee ballot processing and increasing the risk of disenfranchising voters. They also opposed the measure because it does nothing to safeguard elections.

44. On June 30, 2020, less than a month after the June 2 Primary, Governor Kim Reynolds signed HF 2643 into law. As a direct result, election officials can no longer use the “best means available” to find such information. HF 2643 § 124.

IV. HF 2643 burdens absentee voting.

45. HF 2643 makes it more difficult to request and vote an absentee ballot that will be counted by prohibiting the longstanding practice for supplying missing information from an absentee ballot request using the voter registration database, which took a few short minutes to complete.

46. A near-complete absentee ballot request already supplies the election official with sufficient information to ascertain a missing Absentee ID Number or other statutorily-required information, but HF 2643 now requires a labyrinthine process to contact voters to obtain information already before the official, which will lead to delays in delivering absentee ballots and ultimately disenfranchisement.

47. Voters who are unaware of their Absentee ID Numbers are especially burdened. Until 2018, the absentee ballot request did not require an Absentee ID Number at all, meaning many experienced absentee voters will be unfamiliar with the requirement and are likely to omit it from the request form.

48. Voters are often unaware of what their Absentee ID Number is, and even if a voter is able to determine that it should be the equivalent of their Iowa driver's license non-operator identification number, voters who lack such a number will have to have handy their Voter PIN--in other words, there is almost no chance that it is a number that they will have already memorized.

49. In December 2017, the Secretary mailed Voter ID Cards, which contain the Voter PIN, to about 123,000 Iowa voters who, according to the voter registration database, lacked an Iowa driver's license or non-operators ID. Since the initial mailing, voters without Iowa-issued IDs receive a Voter ID Card from county election offices upon registration.

50. But unlike a driver's license or a non-operator ID, the Voter ID Card serves a single purpose; it is used only for voting and thereby less likely to be carried on a daily basis, particularly by infrequent voters, and more prone to loss.

51. For many voters, months or years have passed since they received their Voter ID Cards—if at all—or needed to reference them. Thus, they likely have discarded or lost the cards, or have not memorized their Voter PIN.

52. This increases the risk that many voters will omit their Voter PIN from the request form and will be required to go through the burdensome process of being notified of the omission rather than the county election official simply relying on the voter registration database.

53. Moreover, possessing an Absentee ID Number is *not* a voter qualification, and nothing on the request suggests that including the number is required.

54. Prospective absentee voters are not made aware that failing to include information such as their Absentee ID Number, date of birth, or permanent residence will lead to these extra barriers to casting an absentee ballot. Nothing on Secretary Pate's website in the Frequently Asked Questions indicates this information is required to vote absentee.

55. HF 2643's new barriers thus appear designed to result in voter confusion from repeat absentee voters and new voters alike, delays in mailing absentee ballots, and ultimately disenfranchisement.

56. Regardless of the category of missing information—Absentee ID Number, date of birth, or registration address—HF 2643 will require significant efforts for voters to supply this missing information and delay the absentee balloting process on an already short timeline (i.e., 29 days before Election Day).

57. Though HF 2643 requires that voters be called and e-mailed first, most voters do not provide their phone numbers or e-mail addresses to county election officials. Indeed, providing the voter's e-mail and phone number on the absentee ballot request is *not* required and many voters are unlikely to include such private information because that form is a public record.

58. Moreover, the voter registration database does not contain e-mail addresses or phone numbers for many voters, and, when it does, those e-mail addresses or phone numbers are likely to be outdated or incorrect.

59. For example, in Linn County, election officials only have a phone number or e-mail address for only 65,000 out of about 155,000 registered voters in the County.

60. This makes it all the more likely that most voters will have to be contacted by mail, which led to delays and disenfranchisement in the past during the June 2018 Primary and

will surely cause the same in upcoming elections, albeit on a much larger scale in the November General.

61. Further, HF 2643 provides no minimum time that an election official must wait to hear back from a voter with whom they sent an e-mail or called before sending notice by mail. Without any uniform guidance, county election officials will mail voters notices at varying times, depending on the availability of office staff and capacity, leading to differential treatment of voters among and even within counties.

62. The law also assumes that the communications from the county election officials will actually reach voters as opposed to e-mails ending up in spam filters, phone calls going unanswered, or USPS misdelivering, not delivering, or delaying delivery of the letters.

63. HF 2643 unnecessarily places the onus on absentee ballot applicants to be hyper vigilant to resolve a problem they do not know exists and that, in prior elections, election officials could fix independently and with ease.

64. Voters who do not speak English as a first language will be further burdened, as the phone calls, e-mails, and letters from the county election officials will be communicated in English.

65. Additionally, regardless of the method of contact election officials must use, when voters are not notified of issues with their absentee ballot requests until later in the election cycle, they are more likely to be at risk of being disenfranchised. This is because even if they are able to rectify the missing information, the delay caused by contacting voters rather than using the voter registration database consequently delays the issuance of their ballot, giving the voter less time to return their ballots in time to be counted, if at all.

66. Voters may also believe they are going to receive an absentee ballot but never do, causing confusion and threatening their ability to vote in person if they have not planned to do so.

67. For those voters with disabilities, limited access to transportation, inflexible work schedules, students living out of state, or who are immunocompromised or have other high-risk factors for COVID-19, in-person voting may not be a realistic option, and they will be entirely disenfranchised.

68. HF 2643 also operates to chill electoral organizing activity by requiring entities and individuals that engage in electoral and civic activity—including Plaintiffs—to devote significant time and resources to educating prospective voters about the changes wrought by the challenged provision that have been diverted from other activities.

V. The COVID-19 pandemic only exacerbates the burden HF 2643 imposes on Iowa's absentee voting system.

69. The burden imposed on voters by HF 2643 would be unconstitutional in any election. But, enacting such a barrier in the midst of a global pandemic, where a record number of Iowans will rely on absentee voting to cast their ballots without jeopardizing their health, only compounds the harm imposed by this legislation.

70. As of the date of this filing, the United States continuously logs record numbers of daily confirmed COVID-19 cases with over 67,000 cases confirmed on July 10, 2020.

71. In all, the United States has reported over 3.3 million COVID-19 cases and over 132,000 deaths.

72. Iowa has not been spared. As of July 13, 2020, Iowa has confirmed over 35,500 cases of COVID-19 (3,847 of those in the last seven days) and recorded over 750 deaths.

73. To prevent the spread of the disease, the U.S. Centers for Disease Control and Prevention (“CDC”) recommends that people avoid close contact with others.

74. Consistent with this advice, Iowa Governor Kim Reynolds extended her COVID-19 public health emergency proclamation requiring Iowans to maintain social distancing measures for an additional 30 days on June 25, 2020.⁶

75. The federal government is preparing for the COVID-19 crisis to last 18 months and has warned that the pandemic could come in “multiple waves.” But, the White House’s coronavirus advisor and the Director of the National Institute of Allergy and Infectious Diseases, Dr. Anthony Fauci, noted that the United States has not yet made it through the first wave.

76. Dr. Fauci also warned that new COVID-19 cases “could go up to 100,000 a day” in the United States and indicated that COVID-19 is a public health official’s “worst nightmare.”

77. Similarly, the Director of the National Center for Immunization and Respiratory Diseases at the CDC, Dr. Nancy Messonnier, has stated that she expects the virus to continue spreading in the United States until next year.

78. These sentiments are shared by scientists outside the United States government. The COVID-19 Response Team at the Imperial College of London has estimated that social distancing and other preventative measures will be required until a vaccine is developed and distributed widely, which they predict could take “18 months or more.”

79. As states prepare for upcoming elections, including the November General, CDC guidance recommends that voters consider alternatives to casting their ballots in person. For this reason, the Secretary mailed absentee ballot requests to all active registered voters, and an overwhelming majority of voters cast absentee ballots, for the June 2 Primary.

⁶ Office of the Governor of Iowa Kim Reynolds, *Gov. Reynolds signs new proclamation continuing the State Public Health Emergency Declaration*, (June 25, 2020) <https://governor.iowa.gov/press-release/gov-reynolds-signs-new-proclamation-continuing-the-state-public-health-emergency-6>.

80. The November General will see an even higher percentage of voter turnout than the June 2 Primary, and as a result, a higher reliance on absentee voting. Election officials will likely be inundated with a record number of absentee ballot requests.

81. Also, increases in absentee voting in the November General means that a significant number of voters who typically vote in person will be voting absentee, many for the first time. These voters differ from current absentee voters in important respects that make them even more likely to be burdened by HF 2643's change to absentee ballot request process. As new absentee voters, they are more likely to make mistakes in completing their absentee ballot requests.

82. Indeed, local elections officials received nearly 500,000 absentee ballot requests during the June 2 Primary. Thousands of those requests were missing information such as the Absentee ID Number. The increased volume of absentee ballot requests coupled with the extra work imposed on county election officials by HF 2643 will slow processing times and increase delay.

83. As the pandemic continues, the United States Postal Service ("USPS") has been experiencing operational difficulties, delivery delays, and budget shortfalls. Over 3,000 postal workers across the country have tested positive for COVID-19, more than 67 have died, and 5,800 workers are under quarantine. Postal workers in Iowa are no different.

84. In the past when USPS has faced a budget crisis, it has responded by closing hundreds of processing centers. Moving forward, it is likely that the USPS will need to make cuts to routes, processing centers, or staff--any of which is likely to increase mail processing delays.

85. As USPS attempts to deliver an unprecedented number of absentee ballots, requests, and deficiency notices--both from election officials to voters, and then back again--the

system will be under increased pressure, causing delays and, ultimately, an untold number of absentee ballots will not be received by voters in time to cast them.

86. This is particularly true of voters who are notified of absentee ballot request deficiencies within the last few days before Election Day. As history has demonstrated, the number of voters who request absentee ballots in the final weeks before the election has been significant.

87. In the 2016 General Election, for example, more than 15,000 Iowa voters per day requested absentee ballots in the period from 10 days to 20 days before the election. With a record number of absentee ballots cast in the June Primary, those numbers increased substantially. The same will be true of the November General and other upcoming elections.

88. HF 2643's unnecessary complications add significant delay to a statutorily compressed absentee voting period where every passing day could mean the difference between a vote cast and a vote denied. Election administrators taking extra time or resources to meet the demands of HF 2643 delays their review of and responses to *other voters* as well.

89. In addition, given the widespread use of absentee voting, making it more difficult for people to cast absentee ballots will likely result in more voters casting ballots in person on Election Day, which in turn will increase lines and waiting times.

90. According to one Iowa county election official, the restrictions on absentee voting "could lead to some larger lines . . . possibly at the polls," lengthening waiting times and thus reducing voter turnout.

91. Thus, the change to absentee voting under HF 2643 will burden all Iowa voters in upcoming elections.

VI. Some Counties have recognized and developed differing strategies to ease the burden HF 2643 imposes on voters and election officials.

92. Cognizant of the barriers HF 2643 will impose, particularly given the expected increase in voter turnout and reliance on absentee ballots for the November General, counties have begun to undertake a patchwork of solutions to ease the burden on voters and election administration, guaranteeing voters will be treated differently across Iowa.

93. County elections officials in Polk, Johnson, Linn, and Black Hawk Counties have announced they will independently mail absentee ballot requests to voters. But at this time only Johnson and Linn County officials plan to prefill voters' Absentee ID Numbers on requests to avoid confusion among voters who are unfamiliar with the Absentee ID Number requirement or unaware of their Voter PIN. These approaches will serve to lessen the administrative burden of mailing deficiency notices to hundreds or thousands of voters, a costly and time-consuming endeavor.

94. On July 6, Heidi Burhans, Director of Elections for Secretary of State's Office, e-mailed county election officials to inform them not to prepopulate absentee ballot requests Absentee ID Numbers before mailing them to voters. But, upon information and belief, some counties will not follow Director Burhans' guidance.

95. In sharp contrast, Dallas, Warren, and Story counties do not plan any mass mailings of absentee ballot requests altogether. Dallas County Auditor Julia Helm states that some non-governmental organizations will be sending the requests to residents instead.

96. In addition, resources among counties will vary in terms of the ability to complete the burdensome process HF 2643 has imposed. Not all counties can afford to hire additional staff needed to contact hundreds, if not thousands, of voters in the 29 days leading up

to Election Day—while also performing all other election administration tasks, such as processing absentee ballots, registering Iowans to vote, and assisting voters with any issues that arise.

97. Larger counties will require more staff to process a higher volume of requests and contact voters, while smaller counties will lack the funds for additional staff. This will lead to delays in processing absentee ballot requests and notifying voters.

98. Similarly, larger counties will be able to afford to mail deficiency notices to thousands of voters, whereas smaller counties have much more limited budgets to spend on mailing these notices.

99. Thus, voters residing in larger counties will be more likely to receive timely notice than those living in smaller counties.

100. HF 2643 has left it up to counties to dictate whether voters will successfully return “complete” absentee ballot requests and receive their ballots in time to successfully cast them.

VII. The State has no adequate interest in the challenged law and policy generally, and even less interest during the pandemic.

101. The State has no legitimate interest in prohibiting election officials from using the voter registration database to fill in missing information from an absentee ballot request. The State’s interest cannot possibly outweigh the serious burdens that the challenged provision imposes on voters’ fundamental right to vote. There was no need to change the longstanding practice of election officials looking up missing information in the voter registration database.

102. HF 2643 is also nonsensical when one considers the fact that if a voter does not know their Absentee ID Number but wants to completely fill out the absentee ballot request, they must contact their county election official. Before a county election official can provide the Absentee ID Number, that election official must confirm the applicant’s identity by verifying

details such as their address, date of birth, and full name—information also sought on the absentee ballot request form—and then look in the very voter registration database that they are prohibited from reviewing if the same Absentee ID Number is missing from an otherwise complete absentee ballot request form. In other words, HF 2643 needlessly creates more work for both the voters and the election officials.

103. The burden HF 2643 imposes on voters and election officials is not necessary to safeguard Iowa elections, which has a long and proud history of fair and open elections. Indeed, when enjoining the nearly identical prohibition in the Secretary’s 2017 Rule, the court found that “There [wa]s no indication fraud occurred in elections held prior to the promulgation of the rule when the voter registration system was used to obtain missing information.” Ruling on Pet’rs. Mot. to Stay Agency Action, *LULAC v. Pate*, at 10.

104. In 2016, the Electoral Integrity Project, an independent academic project based at Harvard and Sydney Universities, scored Iowa as one of the top five states in its Perceptions of Electoral Integrity Index. It is therefore unsurprising that the Secretary defended Iowa’s record in October 2016 against unsubstantiated charges of voter fraud made by then-Republican presidential nominee Donald Trump by saying: “Iowa is one of the best states in the nation for both voter participation and voter integrity.” After the 2016 election, when asked about President Trump’s “claim of 3 to 5 million people voting illegally,” Secretary Pate responded: “I certainly don’t see it in Iowa.”

105. Consistent with Secretary Pate’s public statements, voter fraud in Iowa is practically non-existent. Indeed, despite Iowa’s investment of substantial resources to investigate any possible election misconduct, there have been exceedingly few confirmed cases of improperly cast ballots in the state, let alone the type of absentee ballot verification fraud that HF 2643 purports

to address. These results are consistent with numerous comprehensive nationwide studies that have found that voter fraud is exceptionally rare.

106. Moreover, each absentee ballot applicant must swear an oath that they are who they list on the request and that they are eligible to vote. “I swear or affirm that I am the person named above and I am a registered voter or I am entitled to register at the address listed on this form. I am eligible to receive an absentee ballot for the election indicated above.” Falsification of this oath is punishable as election misconduct in the first degree. Iowa Code § 39A.2.

107. Absent relief from this Court, HF 2643 will impose a severe burden on Iowa voters and increase the risk of complete disenfranchisement in upcoming elections, including the November General. The Iowa Constitution empowers and, indeed requires, the Court to ensure that the right to vote is protected by striking the challenged provision and returning to a well-functioning, reliable, decades-old procedure.

CAUSES OF ACTION

COUNT I

Violation of Article I, Section 9 and Article II, Section 1 of the Iowa Constitution (Substantive Due Process, Right to Vote):

108. Plaintiffs reallege and incorporate by reference all prior paragraphs of this Complaint and the paragraphs in the counts below as though fully set forth herein.

109. The Iowa Constitution mandates that all adult residents “shall be entitled to vote at all elections,” Article II, § 1, except those disqualified by the Article II, § 5. Thus, “[v]oting is a fundamental right in Iowa . . .” and “regulatory measures abridging the right to vote ‘must be carefully and meticulously scrutinized.’” *Chiodo v. Sect. 43.24 Panel*, 846 N.W.2d 845, 848, 856 (Iowa 2014) (citation omitted).

110. Article I, Section 9 of the Iowa Constitution mandates that “no person shall be deprived of life, liberty, or property, without due process of law,” which “prevents the government from engaging in conduct that shocks the conscience or interferes with rights implicit in the concept of ordered liberty.” *King v. State*, 818 N.W.2d 1, 31 (Iowa 2012) (internal quotation marks omitted).

111. A substantial burden on or abridgment of a fundamental constitutional right such as the right to vote is subject to strict scrutiny. *State v. Hernandez-Lopez*, 639 N.W.2d 226, 238 (Iowa 2002); *King*, 818 N.W.2d at 31 (Iowa 2012). Accordingly, the court must “determine whether the government action infringing the fundamental right is narrowly tailored to serve a compelling government interest.” *Hernandez-Lopez*, 639 N.W.2d at 238.

112. The challenged provision imposes substantial burdens on Iowa voters generally, in ordinary times, and especially during a global pandemic when voters have no other option but to vote absentee.

113. The impact of the challenged provision is severe and unnecessary. The Iowa state legislature replaced the old system that would take mere minutes to cure an absentee ballot of missing information with new hurdles that could take days, even weeks to resolve, disenfranchising voters who apply for absentee ballots within the timeframe allowed and discouraging others who are eligible to vote from voting absentee. This provision does not serve a compelling government interest, nor is the challenged provision narrowly tailored to do so.

COUNT II

Violation of Article I, Sections 6 and 7 of the Iowa Constitution (Undue Burden):

114. Plaintiffs reallege and incorporate by reference all prior paragraphs of this Complaint and the paragraphs in the counts below as though fully set forth herein.

115. “The foundational principle of equal protection is expressed in Article I, Section 6 of the Iowa Constitution,” *Varnum v. Brien*, 763 N.W.2d 862, 878 (Iowa 2009), while Article I, Section 7 protects the “liberty of speech.” The Iowa courts consider case law interpreting the analogous federal Constitutional provisions when interpreting the Iowa Constitution. *See In re A.W.*, 741 N.W.2d 793, 806–07 (Iowa 2007); *Iowans for Tax Relief v. Campaign Fin. Disclosure Comm'n*, 331 N.W.2d 862, 868 (Iowa 1983).

116. A court considering a challenge to an election law under these provisions must carefully balance the character and magnitude of injury to the voting rights that the Plaintiffs seek to vindicate against the justifications put forward by the State for the burdens imposed by the rule. *See Burdick v. Takushi*, 504 U.S. 428, 434 (1992); *Anderson v. Celebrezze*, 460 U.S. 780, 789 (1983). “However slight th[e] burden may appear, . . . it must be justified by relevant and legitimate state interests sufficiently weighty to justify the limitation.” *Crawford v. Marion Cnty. Election Bd.*, 553 U.S. 181, 191 (2008) (Stevens, J., controlling opinion) (internal quotation marks omitted).

117. The challenged provisions impose burdens on voters generally, and particularly severe burdens on voters who vote absentee.

118. The imposed voting restrictions must be justified with evidence of correspondingly weighty interests. *See ¶ 100, supra.*

119. The impact of this challenged provision is severe. Voters face unnecessary, increased risk of their absentee ballot not counting, or not receiving a ballot altogether. This provision will lead to greater confusion, expenditure of more time, energy, and funds to vote. This measure will severely burden absentee voters. It will also increase the burden on County Auditors and Commissioners of Elections who are otherwise busy administering the election.

120. Given that the law does not plausibly further any weighty interest, the burden imposed by HF 2643 far outweighs the benefits of the law and the challenged provision must therefore be invalidated under Sections 6 and 7 of Article I of the Iowa Constitution.

COUNT III

Violation of Article I, Section 9 of the Iowa Constitution (Procedural Due Process):

121. Plaintiffs reallege and incorporate by reference all prior paragraphs of this Complaint and the paragraphs in the counts below as though fully set forth herein.

122. Article 1, Section 9 of the Iowa Constitution requires that “no person shall be deprived of life, liberty, or property, without due process of law.”

123. The right to vote is a liberty within the meaning of the Due Process Clause. *See, e.g.*, Iowa Const. art. II, § 1; *Chiodo*, 846 N.W.2d at 484; *Bowers v. Polk Cty. Bd. of Supervisors*, 638 N.W.2d 682, 692 (Iowa 2002); *Anderson*, 460 U.S. at 787; *Hunter v. Hamilton County Bd. of Elections*, 635 F.3d 219, 232, 243–44 (6th Cir. 2011).

124. To determine whether a person deprived of a liberty has been afforded procedural due process, the Iowa Constitution requires weighing “(1) the private interest that will be affected by the government action; (2) the risk of the erroneous deprivation of the interest, and the probable value of additional procedures; and (3) the government interest in the regulation, including the burdens imposed by additional procedures.” *Hernandez-Lopez*, 639 N.W.2d at 240 (citations omitted). A voter has a weighty interest in the exercise of the franchise. *See Griffin v. Pate*, 884 N.W.2d 182, 185, 207 (2016) (“[V]oting exists as a fundamental right for people who meet the constitutional qualifications”); *Chiodo*, 846 N.W.2d at 848 (voting “occupies an irreducibly vital role in our system of government by providing citizens with a voice in our democracy and in the election of those who make the laws by which all must live”); *Wesberry v.*

Sanders, 376 U.S. 1, 17–18 (1964) (“No right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live”), cited with approval in *Devine v. Wonderlich*, 268 N.W.2d 620, 623 (Iowa 1978).

125. The procedure enacted by HF 2643 bars election officials from using the voter registration system to search for any missing information from an absentee ballot request and requires them to instead attempt to make direct contact with the voter via telephone or e-mail and then, if unsuccessful, by mail. The current version of the State of Iowa Official Absentee Ballot Request form does not require phone and e-mail but designates the fields as merely “Important” without further explanation. Therefore, election officials will likely only have an address as a means of contacting voters. Instead of allowing election officials to check the voter registration database for any missing information from an absentee ballot request, a process that could take mere minutes, HF 2643 requires a more unreliable process that can lead to extensive delays, delays that will disenfranchise voters. To comply with Iowa Code § 53.2(1)(b), voters must submit absentee ballots before Election Day.

126. The condensed voting timeline compounded with the unreliable HF 2643 procedure to rectify absentee ballots means voters will be disenfranchised without any opportunity to be heard to cure the missing information. Allowing election officials to take advantage of the easily accessible voter registration system to cure absentee ballots with missing information would carry far less risk of erroneous depravation of the right to vote.

127. The government has no justifiable interest in applying a burdensome, unreliable procedure. There is no evidence of significant levels of absentee voter fraud in Iowa, or that the challenged provision will prevent any fraud and the government’s interest in the integrity of elections was well-protected before the enactment of HF 2643.

COUNT IV

Violation of Article I, Section 6 of the Iowa Constitution (Equal Protection):

128. Plaintiffs reallege and incorporate by reference all prior paragraphs of this Complaint and the paragraphs in the counts below as though fully set forth herein.

129. “The foundational principle of equal protection is expressed in article I, section 6 of the Iowa Constitution,” *Varnum*, 763 N.W.2d at 878. “The essential promise of equal protection is that ‘all persons similarly situated should be treated alike.’” *Clayton v. Iowa Dist. Court for Scott Cty.*, 907 N.W.2d 824, 827 (Iowa Ct. App. 2017) (quoting *Racing Ass’n of Cent. Iowa v. Fitzgerald*, 675 N.W.2d 1, 7 (Iowa 2004)).

130. The principle of equal protection has repeatedly been applied by courts to bar arbitrary and disparate treatment. In *Bush v. Gore*, the Supreme Court held that the Equal Protection Clause of the U.S. Constitution applies not just to the “initial allocation of the franchise,” but also to “the manner of its exercise,” and that “once granted the right to vote on equal terms, the State may not, by later arbitrary and disparate treatment, value one person’s vote over that of another.” 531 U.S. 98, 104–05 (2000). There, the Court found it problematic that individuals who would engage in the recount process “had no previous training in handling and interpreting ballots,” *id.* at 109, and that the recount procedures were not “consistent with [the] obligation to avoid arbitrary and disparate treatment of the members of [the] electorate,” *id.* at 105. Similarly, in *Wexler v. Anderson*, 452 F.3d 1226, 1231–32 (11th Cir. 2006), the appellate court found that a non-uniform voting practice that makes it “less likely” that a person in one county will “cast an effective vote” than a voter in another county is a question “of constitutional dimension.” And, in *Stewart v. Blackwell*, 444 F.3d 843, 871 (6th Cir. 2006), vacated en banc as moot, 473 F.3d 692 (6th Cir. 2007), the Sixth Circuit applied strict scrutiny to the use of disparate

voting technologies by particular counties, concluding that the disparity in technologies “result[ed] in a greater likelihood that one’s vote will not be counted on the same terms as the vote of someone” in a different county.

131. Voters in some counties will receive absentee ballot requests preprinted with an individual voter’s Absentee ID Number, while voters in other counties will not. An absentee ballot request without an Absentee ID Number is subject to additional hurdles not required by those living in counties with preprinted Absentee ID Number on each absentee ballot request. And, without guidance on how long an election official must wait between e-mailing or calling the voter and mailing the voter or whether election officials should (or must) follow-up with the voter means that applicants will not be notified of issues in their absentee ballots in a uniform manner across Iowa. Thus, voters will be treated differently based on the county in which they live.

132. Because these arbitrary, disparate, and standard less decisions will determine whether an individual’s vote will be counted, HF 2643 violates Article I, Section 6 of the Iowa Constitution.

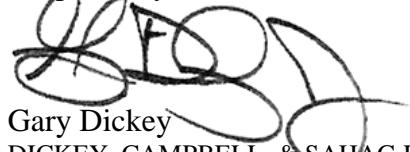
PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court enter the following relief against the Defendant:

- A. An order declaring that Section 124 of HF 2643 violates the Iowa Constitution;
- B. An order enjoining the Defendant, his respective agents, officers, employees, and successors, and all persons acting in concert with each or any of them from implementing, enforcing, or giving any effect to the challenged provision;
- C. An order awarding Plaintiffs their costs, disbursements, and reasonable attorneys' fees incurred in bringing this action pursuant; and
- D. Such other and further relief as the Court deems just and proper.

DATED this 14th day of July, 2020.

Respectfully submitted,



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