

IN THE IOWA DISTRICT COURT IN AND FOR WOODBURY COUNTY

<p>REPUBLICAN NATIONAL COMMITTEE, DONALD J. TRUMP FOR PRESIDENT, INC., NATIONAL REPUBLICAN SENATORIAL COMMITTEE, NATIONAL REPUBLICAN CONGRESSIONAL COMMITTEE, and THE REPUBLICAN PARTY OF IOWA,</p> <p>Plaintiffs,</p> <p>vs.</p> <p>PATRICK GILL, AUDITOR OF WOODBURY COUNTY, IOWA, in his official capacity,</p> <p>Defendant.</p>	<p>Case No. EQCV193154</p> <p>ORDER RE: MOTION FOR TEMPORARY INJUNCTION</p>
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On the 28th day of August 2020, the Plaintiff's Motion for Temporary Injunction filed August 17, 2020, came before the Court for hearing. By agreement of the parties the hearing was held by videoconference. The Plaintiffs appeared through their counsel Alan Ostergren. The Defendant appeared along with his counsel Jeff Wright. The Intervenors appeared through their counsel Kevin Hamilton. The hearing was reported by Official Court Reporter Cristi Bauerly.

Each party made oral argument and the matter was submitted based on the arguments presented and the filings of the parties. Based on the record created and the arguments made, the Court makes the following findings of fact:

1. The Plaintiffs in this matter are the Republican National Committee, Donald J. Trump for President, Inc., National Republican Senatorial Committee, National Republican Congressional Committee, and The Republican Party of Iowa. Each are political organizations involved in the November 2020 General Election.

2. The Defendant, Patrick Gill, is the duly elected County Auditor for Woodbury County, Iowa. As such he is the County Commissioner of Elections for Woodbury County, Iowa.

3. The Intervenors, the League of United Latin American Citizens of Iowa is a Latinx Civil Rights organization and Majority Forward is a Section 501(c)(4) nonprofit organization. Both organizations are actively involved in voting rights issues involving their members in Iowa in general and Woodbury County in particular.

4. On August 14, 2020, the Plaintiffs' filed their Petition for Declaratory Judgment and Injunctive Relief against the Defendant in this matter.

5. In the Plaintiff's Petition, the Plaintiffs seek a finding and declaration by the Court that the Defendant has violated the Iowa Secretary of State's July 17, 2020, Emergency Election Proclamation regarding absentee ballot requests (ABR) by voters. In addition the Petition requests that the Defendant be enjoined in the following ways:

a) That the Defendant be ordered to obey the July 17, 2020, directive of the Iowa Secretary of State in full;

b) That the Defendant shall obey all other orders or directives of the Secretary of State;

c) That the defendant shall with respect to any prepopulated ABR forms returned to his office:

i) Contact the sender in writing to inform the sender that the prepopulated ABR form should not have been sent in the form provided by the Defendant;

ii) Inform the sender that the defendant is unable to act on the prepopulated

ABR form;

iii) Invite the sender to submit an ABR in the form prescribed by the Secretary of State.

d) That the injunction entered shall apply to the Defendant, his employees and any third party under his control.

6. That the Plaintiffs also sought a Temporary Injunction to order this same relief on a temporary basis pending the final outcome of the Petition. This is the matter currently before the Court.

7. That the League of United Latin American Citizens of Iowa's and Majority Forward filed an Answer and Motion to Intervene wherein they sought to intervene as defendants and defend all claims brought by the Plaintiffs herein.

8. A hearing was held on the Motion to Intervene on August 24, 2020, and an order was entered on August 25, 2020, granting the Motion to Intervene in part and denying the Motion in part. The Court's order allowed the intervenors to participate in the hearing on the request for temporary injunction regarding what the appropriate remedy should be if the Court determines that the Defendant's actions were unlawful.

9. The dispute herein involves the manner in which absentee ballot requests are handled by local county auditors.

10. On March 9, 2020, Governor Reynolds issued a Proclamation of Disaster Emergency in regards to the COVID-19 pandemic. On March 17, 2020, President Trump issued a proclamation declaring the COVID-19 outbreak to be a national emergency.

11. In response to Governor Reynolds and President Trump's disaster proclamations, the Iowa Secretary of State requested permission from the Iowa

Legislature's Legislative Counsel to issue an Emergency Election Directive to address issues dealing with voting challenges resulting from the COVID-19 pandemic. After obtaining approval from the Legislative Counsel, the Iowa Secretary of State issued an Emergency Election Proclamation on July 17, 2020. This proclamation provided that the Secretary of State would mail an Official State of Iowa Absentee Ballot Request form with instructions to Iowa's active registered voters for the November 3, 2020, election, which form was to be blank except for the Election Date and Type. Said proclamation further stated that County Auditors shall distribute "only the blank Official State of Iowa Absentee Ballot Request Form with official instructions that is promulgated by the Secretary of State's Office pursuant to Iowa Code Section 53.2(2)(a)." The purpose of using blank forms purportedly to be "to ensure uniformity and to provide voters with consistent guidance on the absentee ballot application process".

12. Shortly after the issuance of the Secretary of State's Proclamation, the Defendant directed the members of his office to send ABR forms with voter identification information pre-populated on the forms to attempt to control the costs of compliance with HF 2643 and to assist voters with the difficulties they have with correctly supplying their absentee voter ID information.

13. The Defendant has sent out over 56,000 ABR forms to the citizens of Woodbury County with the pre-populated identification information included. As of the date of this hearing the Defendant has received approximately 16,000 signed ABR forms back. Of this number the Defendant estimates that approximately 14,000 are in response to his mailing of the pre-populated ABR's. These forms were sent to active voters in Woodbury County regardless of party affiliation

13. HF2643, approved by the legislature in June 2020, amended Iowa Code Section 53.2(4)(b) to require the county commissioner of elections (County Auditor) to contact directly persons who had submitted an ABR with incorrect or missing identifying information before processing the ABR and issuing an absentee ballot. Prior to HF2643, the County Commissioner would use the I-Voter database to correct such missing information without having to contact the applicant. This change in the statute could create a significant burden upon the Defendant as he estimates that he would have to contact between 3,000 and 4,000 applicants that would have submitted applications with incorrect information if the pre-populated ABR's were not used.

14. The Defendant contends that it will cost his office at least \$20,000 just to notify each person sent a pre-populated ABR form that it would not be accepted and that a new ABR had to be requested. He would also have to hire five temporary employees and obtain additional equipment to void the pre-populated ABR forms and that this would take 30 days to complete. The Defendant also believes that this process would create a great deal of confusion and disenfranchisement with voters who thought that they had already properly requested an absentee ballot.

15. In defense of the Plaintiff's Motion for Temporary Injunction, the Defendant contends the following:

a) That the Plaintiffs lack standing to bring this suit.

b) That the Plaintiffs have failed to show that they are likely to succeed on the merits of their underlying claims due to:

- 1) The Secretary of State lacked authority to issue his Emergency Election Proclamation on July 17, 2020.

- 2) State law does not prohibit the County Auditor from mailing pre-populated ABR's.
- c) That Plaintiffs have failed to show an injury or irreparable damage.
- d) That the balance of harm analysis weighs against the issuance of a temporary injunction.

LEGAL PRINCIPLES

General Principles Regarding Temporary Injunctions

The Iowa Rules of Civil Procedure provide, in part, as follows:

Rule 1.1501 Independent or auxiliary remedy.

An injunction may be obtained as an independent remedy by an action in equity, or as an auxiliary remedy in any action. In either case, the party applying therefor may claim damages or other relief in the same action. An injunction may be granted as part of the judgment; or may be granted by order at any prior stage of the proceedings, and is then known as a temporary injunction.

Rule 1.1502 Temporary; when allowed

A temporary injunction may be allowed under any of the following circumstances:

1.1502(1) When the petition, supported by affidavit, shows the plaintiff is entitled to relief which includes restraining the commission or continuance of some act which would greatly or irreparably injure the plaintiff.

1.1502(2) Where, during the litigation, it appears that a party is doing, procuring or suffering to be done, or threatens or is about to do, an act violating the other party's right respecting the subject of the action and tending to make the judgment ineffectual.

1.1502(3) In any case specially authorized by statute.

The primary function of a temporary injunction is to preserve the status quo and protect the subject of the litigation until a final hearing so that a court may grant full, effective relief, if warranted. *Lewis Investments Inc. v. City of Iowa City*, 703 N.W.2d 180, 184 (Iowa 2005).

The issuance or refusal of a temporary injunction rests largely in the sound discretion of the trial court, dependent upon the circumstances of the particular case. *Id.* at 184. The issuance or refusal of a temporary injunction is a delicate matter – an exercise of judicial power which requires great caution, deliberation, and sound discretion. *Kleman v. Charles City Police Dept.*, 373 N.W.2d 90, 96 (Iowa 1985).

Injunctive relief is an extraordinary remedy that is granted only to avoid irreparable harm/damage. *Show v. Goforth*, 618 N.W.2d 275, 277-78 (Iowa 2000). An injunction “should be granted with caution and only when clearly required to avoid irreparable damage.” A court of equity will not grant injunctive relief “unless it appears there is an invasion or threatened invasion of a right, and that substantial injury will result to the party whose rights are so invaded, or such injury is reasonably to be apprehended.” An injunction is appropriate only when the party seeking it has no adequate remedy at law. Before granting an injunction, the court should carefully weigh the relative hardship which would be suffered by the enjoined party upon awarding injunctive relief. *Worthington v. Kenkel*, 684 N.W.2d 228, 232 (Iowa 2004) quoting *Matlock v. Weets*, 531 N.W.2d 118, 122 (Iowa 1995).

A party seeking an injunction must establish (1) an invasion or threatened invasion of a right, (2) substantial injury or damages will result unless an injunction is granted, and (3) no adequate legal remedy is available. *In Re Estate of Hurt*, 681 N.W.2d 591, 595 (Iowa 2004); *Skow*, 618 N.W.2d at 278.

The absence of a finding of irreparable injury is alone a sufficient ground to deny a preliminary injunction. *Dataphase Systems v. C.L. Systems, Inc.*, 640 F.2d 109, 114 (8th Cir. 1981). Loss of income, ultimately recoverable upon a trial of the merits, does

not usually constitute irreparable injury. Mere injuries, however substantial in terms of money, time and energy necessarily expended in the absence of an injunction, are not enough to constitute irreparable injury. The possibility that adequate compensatory or other corrective relief will be available at a later date, in the ordinary course of litigation, weighs heavily against a claim of irreparable harm. *Sampson v. Murray*, 94 S.Ct. 937 (1974). *Thrasher v. Grip-Tite Mfg. Co.*, 535 F.Supp.2d 937, 944 (S.D. Iowa 2008). *Mercatech Inc. v. Kiser*, 2006 WL 680894 (D. Neb.).

In addition, when seeking a temporary injunction, a party must show that it is likely to succeed on the merits of the underlying claim. *PIC USA v. North Carolina Farm Partnership*, 672 N.W.2d 718, 722 (Iowa 2003). The court in addressing the issue of whether the moving party is entitled to a preliminary injunction must view the facts in light of the applicable substantive law which will govern the merits of the claims made by the moving party. *Wachovia v. Stanton*, 571 F.Supp. 1014, 1033 (N.D. Iowa 2008). *APAC Teleservices v. McRae*, 985 F.Supp. 852, 858 (N.D. Iowa 1997).

Where the granting of a temporary injunction would grant essentially the same relief that the moving party would obtain if it won at trial, the movant's burden to prove that the balance of factors weighs in its favor is a heavy one. *APAC Teleservices Inc.*, 985 F.Supp at 857.

A denial of a temporary injunction does not deprive a plaintiff of the right to a trial on the merits of a petition seeking a permanent injunction, nor is it an adjudication against such right. The granting or denial of a preliminary injunction upon a finding of facts is not a final decree. It does not constitute an adjudication of the facts on which the preliminary ruling was made. The judge who hears the suit on the merits is not precluded from

reconsidering the facts upon which a temporary ruling was based. *Economy Roofing v. Zumario*, 538 N.W.2d 641, 648 (Iowa 1995).

If the court determines that it is appropriate to enter an injunction, the injunction should be limited to the requirements of the particular case. The acts or things enjoined should be definitely specified, and they should be set forth with certainty and clearness so that persons bound by the decree may readily know what they must refrain from doing without resorting to speculation or conjecture. *205 Corporation v. Brandow*, 517 N.W.2d 548, 552 (Iowa 1994).

A court will not issue an injunction unless the objected to acts are likely to occur in the future. The court in *Lemmon v. Hedrickson*, 559 N.W.2d 278 (Iowa 1997) in quoting from an earlier case stated:

“Equity interposes by injunction to prevent future rather than past acts, and so acts and practices will not, as a rule, furnish a basis for injunctive relief when they have been discontinued or abandoned before institution of the suit to restrain them, or even after such suit is begun, particularly where there is nothing to indicate a probability that they will be resumed....”

Conley v. Warne, 236 N.W.2d 682, 686 (Iowa 1975) (quoting 42 Am.Jur.2d Injunctions ¶ 5, at 731 (1969)). *Lemmon*, 559 N.W.2d at 280.

Standing

To have standing a party must demonstrate that it has a legal interest in the litigation and that it has been injuriously affected by the Defendant. *Godfrey v. State*, 752 N.W.2d 413, 418 (Iowa 2008). The litigant must have some type of injury different from the population in general. *Id.* at 420. The injury involved need not be economic and can include conservational and other intangible interests. *Id.*

Authority of State Commissioner of Elections

Iowa Code Section 47.1 sets forth the authority of the Iowa Secretary of State as the State Commissioner of Elections. Section 47.1 provides as follows:

1. The secretary of state is designated as the state commissioner of elections and shall supervise the activities of the county commissioners of elections. There is established within the office of the secretary of state a division of elections which shall be under the direction of the state commissioner of elections. The state commissioner of elections may appoint a person to be in charge of the division of elections who shall perform the duties assigned by the state commissioner of elections. The state commissioner of elections shall prescribe uniform election practices and procedures, shall prescribe the necessary forms required for the conduct of elections, shall assign a number to each proposed constitutional amendment and statewide public measure for identification purposes, and shall adopt rules, pursuant to chapter 17A, to carry out this section.

2. a. The state commissioner of elections may exercise emergency powers over any election being held in a district in which either a natural or other disaster or extremely inclement weather has occurred. The state commissioner's decision to alter any conduct for an election using emergency powers must be approved by the legislative council. If the legislative council does not approve the secretary of state's use of emergency powers to conduct an election, the legislative council may choose to present and approve its own election procedures or choose to take no further action. The state commissioner of elections may also exercise emergency powers during an armed conflict involving United States armed forces, or mobilization of those forces, or if an election contest court finds that there were errors in the conduct of an election making it impossible to determine the result.

b. If an emergency exists in all precincts of a county, the number of polling places shall not be reduced by more than thirty-five percent. The polling places allowed to open shall be equitably distributed in the county based on the ratio of regular polling places located in unincorporated areas in the county to regular polling places in incorporated areas in the county.

3. The secretary of state is designated the chief state election official and is responsible for coordination of state responsibilities under the federal National Voter Registration Act of 1993.

4. The state commissioner shall adopt rules describing the emergency powers and the situations in which the powers will be exercised.

5. The state commissioner shall adopt rules pursuant to chapter 17A, for

the implementation of uniform and nondiscriminatory administrative complaint procedures for resolution of grievances relating to violations of Tit. III of Pub. L. No. 107-252.2 In complaint proceedings in which all of the respondents are local election officials, the presiding officer shall be the state commissioner of elections. In complaint proceedings in which one of the respondents is the state commissioner of elections, the presiding officer shall be a panel consisting of all members of the state voter registration commission appointed pursuant to section 47.8, except the state commissioner of elections or the state commissioner's designee.

6. The state commissioner may, at the state commissioner's discretion, examine the records of a commissioner to evaluate complaints and to ensure compliance with the provisions of chapters 39 through 53. This examination shall include assessments conducted or authorized by private or government entities to evaluate a county's security readiness for elections-related technology or physical facilities. The state commissioner shall adopt rules pursuant to chapter 17A to require a commissioner to provide written explanations related to examinations conducted pursuant to this subsection. Any information that is requested by or in the possession of the state commissioner pursuant to this chapter shall not lose its confidential status pursuant to section 22.7, subsection 50.

7. The state commissioner may share information a county provides to an appropriate government agency to safeguard against cybersecurity or physical threats.

8. The state commissioner may adopt rules pursuant to chapter 17A to create minimum security protocols applicable to county commissioners of elections. If a county fails to adhere to these protocols, the state commissioner may limit access to the statewide voter registration system.

Pursuant to Iowa Administrative Code Section 712 – 21.1(1) a “natural disaster” is defined as follows:

a natural occurrence, such as a fire, flood, blizzard, earthquake, tornado, windstorm, ice storm, or other events, which threatens the public peace, health and safety of the people or which damages and destroys public and private property.

Under the doctrine of ejusdem generis (“of the same kind or class”) specific words following more general words restrict application of the more general words to things that are similar to the specific words. *Shatzer v. Globe Am. Cas. Co.*, 639 N.W.2d 1, 5 (Iowa

2001). While whether COVID-19 constitutes a natural disaster has not been determined by the Iowa Supreme Court, the Supreme Court of Pennsylvania in *Friends of Danny Devito v. Wolf*, 227 A.3d 872 (PA 2020), found that it did constitute a natural disaster referring to a definition similar to that in Iowa. In *Devito*, the Pennsylvania Supreme Court stated as follows:

We agree with Respondents that the COVID-19 pandemic qualifies as a “natural disaster” under the Emergency Code for at least two reasons. First, the specific disasters in the definition of “natural disaster” themselves lack commonality, as while some are weather related (e.g., hurricane, tornado, storm), several others are not (tidal wave, earthquake, fire, explosion). To the contrary, the only commonality among the disparate types of specific disasters referenced is that they all involve *889 “substantial damage to property, hardship, suffering or possible loss of life.” In this respect, the COVID-19 pandemic is of the “same general nature or class as those specifically enumerated,” and thus is included, rather than excluded, as a type of “natural disaster.”

Devito, at 888-889.

Requests for Absentee Ballots

The procedure for requesting an absentee ballot in Iowa is set forth in Iowa Code Section 53.2. Section 53.2 provides in pertinent part as follows:

1. a. Any registered voter, under the circumstances specified in section 53.1, may on any day, except election day, and not more than one hundred twenty days prior to the date of the election, apply in person for an absentee ballot at the commissioner's office or at any location designated by the commissioner. However, for those elections in which the commissioner directs the polls be opened at noon pursuant to section 49.73, a voter may apply in person for an absentee ballot at the commissioner's office from 8:00 a.m. until 11:00 a.m. on election day.

b. A registered voter may make written application to the commissioner for an absentee ballot. A written application for an absentee ballot must be received by the commissioner no later than 5:00 p.m. on the same day as the voter registration deadline provided in section 48A.9 for the election for which the ballot is requested, except when the absentee ballot is requested and voted at the commissioner's office pursuant to section 53.10. A written application for an absentee ballot delivered to the commissioner and

received by the commissioner more than one hundred twenty days prior to the date of the election shall be returned to the voter with a notification of the date when the applications will be accepted.

2. a. The state commissioner shall prescribe a form for absentee ballot applications. However, if a registered voter submits an application on a sheet of paper no smaller than three by five inches in size that includes all of the information required in this section, the prescribed form is not required.

b. Absentee ballot applications may include instructions to send the application directly to the county commissioner of elections. However, no absentee ballot application shall be preaddressed or printed with instructions to send the applications to anyone other than the appropriate commissioner.

c. No absentee ballot application shall be preaddressed or printed with instructions to send the ballot to anyone other than the voter.

3. This section does not require that a written communication mailed to the commissioner's office to request an absentee ballot, or any other document be notarized as a prerequisite to receiving or marking an absentee ballot or returning to the commissioner an absentee ballot which has been voted.

4. a. To request an absentee ballot, a registered voter shall provide:

- (1) The name and signature of the registered voter.
- (2) The registered voter's date of birth.
- (3) The address at which the voter is registered to vote.
- (4) The registered voter's voter verification number.
- (5) The name or date of the election for which the absentee ballot is requested.
- (6) Such other information as may be necessary to determine the correct absentee ballot for the registered voter.

b. If insufficient information has been provided, including the absence of a voter verification number, either on the prescribed form or on an application created by the applicant, the commissioner shall, within twenty-four hours after the receipt of the absentee ballot request, contact the applicant by telephone and electronic mail, if such information has been provided by the applicant. If the commissioner is unable to contact the applicant by telephone or electronic mail, the commissioner shall send a notice to the applicant at the address where the applicant is registered to vote, or to the applicant's mailing address if it is different from the residential address. If the applicant has requested the ballot to be sent to an address that is not the applicant's residential or mailing address, the commissioner shall send

an additional notice to the address where the applicant requested the ballot to be sent. A commissioner shall not use the voter registration system to obtain additional necessary information. A voter requesting or casting a ballot pursuant to section 53.22 shall not be required to provide a voter verification number.

c. For purposes of this subsection, "voter verification number" means the registered voter's driver's license number or nonoperator's identification card number assigned to the voter by the department of transportation or the registered voter's identification number assigned to the voter by the state commissioner pursuant to section 47.7, subsection 2.

d. If an applicant does not have current access to the applicant's voter verification number, the commissioner shall verify the applicant's identity prior to supplying the voter verification number by asking the applicant to provide at least two of the following facts about the applicant:

- (1) Date of birth.
- (2) The last four digits of the applicant's social security number, if applicable.
- (3) Residential address.
- (4) Mailing address.
- (5) Middle name.
- (6) Voter verification number as defined in paragraph "c".

5. The commissioner may dispute an application if it appears to the commissioner that the signature on the application has been signed by someone other than the registered voter, in comparing the signature on the application to the signature on record of the registered voter named on the application. If the commissioner disputes a registered voter's application under this subsection, the commissioner shall notify the registered voter and the registered voter may submit a new application and signature or update the registered voter's signature on record, as provided by rule adopted by the state commissioner.

6. An application for a primary election ballot which specifies a party different from that recorded on the registered voter's voter registration record, or if the voter's voter registration record does not indicate a party affiliation, shall be accepted as a change or declaration of party affiliation. The commissioner shall approve the change or declaration and enter a notation of the change on the registration records at the time the absentee ballot request is noted on the voter's registration record. A notice shall be sent with the ballot requested informing the voter that the voter's registration record will be changed to show that the voter is now affiliated with the party whose ballot the voter requested. If an application for a primary election ballot does not specify a party and the voter registration record of the voter from whom the application is received shows that the voter is affiliated with

a party, the voter shall be mailed the ballot of the party indicated on the voter's registration record.

ANALYSIS AND CONCLUSIONS

The burden upon the party seeking a temporary injunction is a heavy burden. To obtain an injunction, the party seeking it must show conduct detrimental to their rights, substantial injury or damage as a result of such conduct and that no other legal remedy is available. Further, the applicant must show that it is likely to succeed on the merits of its claim.

The Defendant initially contends that the Plaintiffs lack standing to pursue their request for injunctive relief. The Defendant asserts that the Plaintiffs' interests in this matter is of a general nature only. Apart from the general public, the Plaintiffs in this case are political parties and candidate organizations that are on the ballot in Woodbury County. The Plaintiffs clearly have an interest in the manner in which absentee ballots are handled far beyond the interests of a regular citizen. The Plaintiffs have a direct interest in seeking that a uniform election system is in place and that established election rules and laws are complied with. Accordingly the Court finds that the Plaintiffs have standing to bring this action and seek the relief requested.

The Defendant does not dispute that he did not comply with the Secretary of State's Emergency Election Directive issued July 17, 2020. The Defendant asserts that he was not obligated to follow that directive because it was improperly issued and that he has the authority under Iowa Code Section 47.2 to distribute ABR forms on his own.

The Defendant contends that the Secretary of State exceeded his authority to exercise emergency powers under Section 47.1(2)(a) as no natural or other disaster had occurred to authorize such exercise of power. The Defendant asserts that since the

disaster Iowa, and for that matter nearly the entire world is facing, is a “public health disaster” that “natural or other disaster” has not occurred. While the Defendant is correct that the definition of a “natural disaster” in the Iowa Administrative Code lists fire, flood, blizzard, earthquake, tornado, windstorm and ice storm as what constitutes a “natural disaster” such definition also includes the language “other events” which threaten the public health of the people. As the Pennsylvania Supreme Court pointed out in *Devito*, supra at 888-889, the only commonality among the items listed is that they all involve substantial damage to property, hardship, suffering or possible loss of life. Clearly COVID-19 is a disaster that involves overwhelming hardship and possible loss of life, as restrictions on the day to day lives of the residents of Woodbury County have been in effect now for months and many residents have been infected and unfortunately far too many have died. Under the circumstances, it is clear to the Court that the State of Iowa was and continues to face a natural disaster as that term is defined by the Iowa Administrative Code when the Secretary of State issued his emergency election directive. Accordingly the Court finds that the Secretary of State’s actions in issuing that directive were properly authorized by Iowa Code Section 47.1(2). In addition, the Court further finds that the Secretary of State’s directive to require all County Commissioners (County Auditors) to issue blank ABR forms was appropriate to ensure statewide uniformity for the issuance of those forms. While the Defendant is correct that there cannot be absolute statewide uniformity in how each respective county auditor carries out their election duties, (managing employees, polling places, etc.) it is not unreasonable to expect that uniform forms relating to ballots will be used.

The Defendants next contend that State law does not prohibit the Defendant from

mailing pre-printed ABR forms to the eligible voters in their county. 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. This conclusion is further supported by the requirement that the County Auditor seek out the applicant to verify information if the information is missing or incorrect on the ABR. Iowa Code Section 53.2(4)(b). This clearly shows that the legislature expected this information to come from the voter and not from the auditor himself.

Next the Defendants contend that the Plaintiff request for relief should be denied as the Plaintiffs have failed to show an injury and/or irreparable damage from the Defendant’s failure to comply with the Secretary of State’s emergency directive. The Plaintiff asserts that the injury they will suffer if an injunction is not granted is that they will be forced to run a different type of campaign in Woodbury County than the rest of the State and that the integrity of the election itself will be put into question. The Iowa Legislature in enacting Section 53.2 has crafted the procedures to be followed in using

absentee ballots in Iowa and what safeguards should be employed to help prevent the possibility of fraud in the use of ABR forms and absentee ballots. As part of this, as stated above, the legislature requires the voter to provide their identifying information to help ensure that the absentee ballots end up in the hands of the voters requesting the same. What the Defendants want the Plaintiffs to be required to do is to prove that fraud has already occurred before they can establish their injury. From a practical perspective, once fraud has occurred it will already likely be too late. While the Defendants claim that voter fraud with absentee ballots is almost nonexistent, it is also the type of fraud that is almost impossible to detect. Sending out ABR's with all the information that a person that intends to commit fraud would need certainly does not limit the likelihood of fraud taking place, but would likely help to facilitate it. As such the Plaintiffs would certainly need to expend a great deal more effort to try to detect fraud than they otherwise would have to if blank forms were used as directed by the Secretary of State and as is required by implication by Section 53.2(4). The Plaintiffs have shown that they will suffer injury and irreparable harm if an injunction is not issued.

Based on the foregoing, the Court finds that the Plaintiffs have met their burden of establishing that the Defendant did violate the Emergency Election Directive of the Iowa Secretary of State Section 53.2(4). The Court further finds that it is likely that the Plaintiffs will succeed on the merits at final hearing and that they will suffer irreparable harm if an injunction is not entered.

Having so found, the Court still must balance the harm sought to be avoided by the Plaintiffs against the harm that the issuance of an injunction might cause. There is no doubt that the issuance of the injunctive relief sought by the Plaintiffs will cause harm

to the voters of Woodbury County who have already sent in their ABR forms based on the pre-populated forms sent out by the Defendant. The Defendant will have to incur significant expense to mail out new information to the voters who received the previous mailing with the pre-populated ABR's and will have to explain the need to send a new ABR form to obtain an absentee ballot. This will create confusion with some voters and will likely result in some voters not receiving an absentee ballot. The cost of these remedial efforts are brought on the Defendant by the Defendants own actions and as such should not be a basis to deny the Plaintiff their requested relief. The impact on innocent voters must be considered however.

While there are certainly very good reasons for why people will want to vote by absentee ballot in light of the ongoing COVID situation in addition to all the traditional reasons why persons want to vote absentee, if certain voters do not understand or request a new absentee ballot, their ability to vote has not been prevented. They still have the opportunity to vote in person on election-day or anytime during the early voting period. While this certainly can create hardship with their ability to vote by absentee ballot, it will not prevent them from still being able to vote by absentee ballot or in-person. This has to be balanced against the fact that the Plaintiffs are attempting to enforce valid election law and procedures upon which the entire integrity of the election process is based. If the integrity of the election is thrown into question, certainly the value of each individual voter's vote is thrown into question as well. The Court is not swayed by either sides' argument that they will have to devote additional resources into Woodbury County as a result of the Court's decision herein. In either case the extra resources that will be expended would help to reduce the potential harm created. By expending more

resources in Woodbury County the Plaintiffs may be more likely to discover the fraud they are concerned about, while at the same time, the devotion of additional resources by the intervenors will certainly minimize the likelihood that persons who want to vote by absentee ballot will still be able to do so.

The Defendant has knowingly violated the lawful directive of the Iowa Secretary of State in issuing the pre-populated ABR forms in this case. Such action as well as the irreparable nature of the injury that has been caused warrants the issuance of a temporary injunction herein.

Regarding the requirement of a bond under Iowa Rule of Civil Procedure 1.508, a court is to require the Plaintiff to post a bond which shall be 125 percent of the probable liability to be incurred by the Defendant to pay any damages that might be sustained by reason of the injunction. The Defendant requests that the bond be set at \$1,000,000 in light of the size of the costs he will incur to comply with the law. This request is somewhat concerning to the Court because it suggests that the Defendant without the entry of this injunction, would refuse to comply with Section 53.2(4) requiring him to verify voter information on the ABR's that are submitted with missing or incorrect information. The Defendants affidavit states that the primary reason he sent out the pre-populated ABR's to begin with was to avoid the costs associated with Section 53.2(4). The costs to the Defendant from the issuance of the injunction should be limited to the costs of obtaining new blank ABR forms to mail, the preparation of a letter explaining to the voters of Woodbury County why the prior mailing will not result in the issuance of absentee ballot to them along with cancelling the ABR's received from the improper mailing. All other costs incurred by the Defendant will be as a result of his required compliance with Iowa

Code Section 53.2(4). The only specific information provided by the Defendant in this regard is that it will cost “at least \$20,000” to send out the new mailing. Accordingly the Court will set the Plaintiff’s bond at 125% of this figure or \$25,000.

IT IS THEREFORE ORDERED that the Plaintiff’s Motion for Temporary Injunction is granted.

IT IS FURTHER ORDERED that as follows:

1. That the Defendant shall obey the July 17, 2020 directive of the Iowa Secretary of State in full;

2. That the Defendant shall obey all other lawful orders or directives of the Iowa Secretary of State;

3. That the Defendant shall with respect to any prepopulated ABR forms returned to his office: a) contact the sender in writing to inform the sender that the prepopulated ABR form should not have been sent in the form provided by the Defendant; b) inform the sender that the Defendant is unable to act on the prepopulated ABR form; and c) invite the sender to submit an ABR in the form prescribed by the Iowa Secretary of State.

IT IS FURTHER ORDERED that this temporary injunction shall apply to the Defendant, his employees and any third party under the Defendant’s control.

IT IS FURTHER ORDERED that the Clerk issue the temporary writ of injunction upon payment by the Plaintiff of bond in the amount of \$25,000.00.



State of Iowa Courts

Type: OTHER ORDER

Case Number EQCV193154
Case Title REP NAT COMMITTEE ET AL V. PATRICK GILL AUDITOR WD COUNTY

So Ordered

A handwritten signature in black ink that reads "Patrick H. Tott". The signature is written in a cursive style and is positioned above a horizontal line.

Patrick H. Tott, District Court Judge,
Third Judicial District of Iowa