

IN THE IOWA DISTRICT COURT IN AND FOR LINN COUNTY

Republican National Committee, Donald J.)
Trump for President, Inc., National Republican)
Senatorial Committee, National Republican)
Congressional Committee, and The Republican)
Party of Iowa,)

Plaintiffs,)

vs.)

Joel Miller, Auditor of Linn County, Iowa, in)
his official capacity,)

Defendant.)

No. EQCV095986

ORDER FOR TEMPORARY
INJUNCTION

Hearing took place on August 27, 2020, on Plaintiffs’ Motion for Temporary Injunction. Appearances were made by Attorney Alan R. Ostergren for Plaintiffs, and by Assistant Linn County Attorney S. Elena Wolford for Defendant, who also appeared personally. Having considered the file, relevant case law, and written and oral arguments of counsel, the Court hereby enters the following ruling.

FACTUAL AND PROCEDURAL BACKGROUND

Plaintiffs filed a Petition for Declaratory Judgment and Injunctive Relief on August 10, 2020. Plaintiffs are political organizations with involvement and interests in the November, 2020 general election, including having candidates on the ballot at all levels of elections. Defendant is the Linn County Auditor and local commissioner of elections. By way of background information, Plaintiffs state that on July 17, 2020 the Iowa Legislative Council met to approve an emergency election measure to promote increased participation in the 2020 general election, and approved the request of the Iowa Secretary of State to send every active registered Iowa voter an absentee ballot request (ABR) form for the 2020 general election. Plaintiffs further state that, upon receiving authorization from the Legislative Council, the Iowa Secretary of State issued an emergency election directive to carry out a statewide mailing of ABR forms to voters. Plaintiffs assert the Iowa Secretary of State announced his intention to mail every Iowa voter an ABR form for the 2020 general election “which shall be blank except for the Election Date and Type.” Plaintiffs further assert that Iowa county auditors were ordered to “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 § 53.2(2)(a).” Plaintiffs contend auditors were permitted to “distribute blank Official State of Iowa Absentee Ballot Request Forms” without the official instructions, and the directive specifically noted that some Iowa counties did not have the financial or technical resources to send ABR forms with certain information prepopulated.

Plaintiffs claim that, shortly after the Secretary of State issued this directive, Defendant announced that he intended to mail every active registered voter in Linn County an ABR form

with all of the data on the form prepopulated, including the voter's name, voter PIN, date of birth, and other information the voter is required to provide. Plaintiffs state that Defendant followed through on this intention, and has made public statements that his office mailed over 140,000 prepopulated forms and had received back over 31,000 completed forms by the end of July, 2020. Plaintiffs contend that because Defendant sent the ABR forms to voters with the required security information prepopulated, there is no assurance that the ABR forms returned to his office were actually sent by the voter listed on the ABR. Plaintiffs also contend that if the Defendant mails absentee ballots in response to the prepopulated ABR forms, any of those absentee ballots that are cast would be subject to challenge and may not be counted in the 2020 general election. Plaintiffs assert that Defendant's actions have harmed and threaten to further harm their interests. Plaintiffs state they have expended resources to advocate for support and encourage turnout from voters under the uniform set of election practices and rules established by a single official who is elected on a statewide basis and derives his authority from Iowa's constitution and laws passed by the legislature. Plaintiffs allege they now are faced with a different set of election practices in Linn County, in that most Iowa voters will not receive a prepopulated ABR form, and Plaintiffs will be required to divert resources to defend against unauthorized individuals casting ballots. Plaintiffs further allege Defendant has willfully circumvented a key election-security measure designed to ensure that the person who submits an ABR form is who he or she claims to be, and Defendant's actions threaten to disenfranchise his own constituents and dilute the votes of Iowans who live outside Linn County.

Plaintiffs seek a declaratory judgment that Defendant has violated his duty to obey the order of the Iowa Secretary of State contained within the July 17, 2020 directive. Plaintiffs also seek an injunction ordering Defendant to obey the July 17, 2020 directive of the Iowa Secretary of State, in full; to obey all other orders and directives of the Iowa Secretary of State; ordering Defendant, with respect to any prepopulated ABR forms returned to his office, to contact the sender in writing to inform the sender that the prepopulated ABR form should not have been sent in the form provided by Defendant, inform the sender that Defendant is unable to act on the prepopulated ABR form, and invite the sender to submit an ABR form in the manner prescribed by the Iowa Secretary of State; and order the injunction to Defendant to apply to him, his employees, and any third parties under his control.

The pending Motion for Temporary Injunction also was filed on August 10, 2020. Plaintiffs seek prompt relief, in the form of a temporary injunction, on the matters set forth in the Petition. Plaintiffs argue they are likely to succeed on their claims; they will be irreparably harmed without an injunction; there is no other adequate legal remedy available to them; and the balance of hardships warrants injunctive relief. Plaintiffs further argue that the Court should enter a temporary injunction to prevent additional and ongoing harm to Plaintiffs and the electoral process. Plaintiffs request the Court order Defendant to obey the July 17, 2020 directive of the Secretary of State, in full; order Defendant to obey all other orders or directives of the Secretary of State; require immediate remedial measures; and apply the injunction to the entire Linn County Auditor's Office and any third party under Defendant's control.

In support of the Motion, Plaintiffs have submitted the July 17, 2020 Emergency Election Directive; news, blog, and Twitter information regarding statements made by Defendant about

the ABR forms; and a Declaration from J. Justin Riemer, Chief Counsel to the Republican National Committee.

Defendant resists the Motion, stating by way of background facts that most voters do not know their voter PIN, and under new law (House File 2643), auditors are required to contact individuals who submit incomplete ABRs to facilitate the incomplete or incorrect forms. Defendant further states that his office only has about 9,000 email addresses and 56,000 phone numbers on file, which, due to the passage of HF 2643, would cause delays in processing ABRs and potential voter disenfranchisement for those people who the auditor is unable to reach. Defendant admits he instructed his staff and vendor to send every active voter, regardless of party affiliation, ABRs with the correct voter PIN included on the forms, so that the ABRs can be returned promptly and to ensure that absentee ballots can be issued to those voters requesting them starting on October 5, 2020, the first date allowed by statute. Defendant states that in early July, 2020, he publicly announced his intention to mail prepopulated ABRs, and on July 6, 2020, the Iowa Secretary of State's office advised that sending ABRs with a voter PIN prepopulated was not permissible. Defendant further states that on July 11, 2020, he advised the Iowa Secretary of State of his intention to start mailing prepopulated ABRs on July 20, 2020, unless instructed otherwise by a court. Defendant states the July 17, 2020 emergency directive followed, and the Secretary of State did not file for an injunction prior to the mailing of prepopulated ABRs, during the mailing of the ABRs, or after the mailing of the ABRs. Defendant claims that mailing of the prepopulated ABRs began on July 20, 2020 and ended on July 28, 2020, and involved sending over 140,000 prepopulated ABRs to active voters in Linn County. Defendant also claims that over 50,000 prepopulated ABRs have been mailed back to his office, and voters then receive from his office a postcard "receipt" indicating that the ballot request has been processed and that there is no further action necessary. Defendant contends his office takes extensive steps to maintain accurate, registered voter records.

For his legal argument, Defendant asserts Plaintiffs lack standing to pursue this action, and their Petition sets forth merely general, hypothetical concern for election fraud and is in no way specified or directed toward Linn County or the State of Iowa. Defendant further asserts Plaintiffs do not have a specific or personal legal interest in the claim, and cannot prove an injury in fact. Defendant argues that a temporary injunction is an inappropriate remedy for Plaintiffs' claim, and at the time of the filing of the Petition, the status quo in Linn County was that each registered voter was mailed a prepopulated ABR. Defendant further argues the claim is moot because Plaintiffs should have acted between July 6, 2020 and July 20, 2020, when Defendant had made his intentions clear regarding mailing the prepopulated ABRs. Defendant contends Plaintiffs have failed to meet their burden of showing that they will be likely to succeed on the merits of their claim, and Plaintiffs have failed to show an injury and/or irreparable damage. Defendant also contends that granting an injunction will cause irreparable harm to Linn County voters, and the harm that will result to Linn County residents far outweighs Plaintiffs' stated harm. Defendant argues Plaintiffs have failed to substantiate a cause of action, and he has not violated Iowa law in mailing prepopulated ABRs. Defendant further argues that even if he committed a mistake in judgment, temporary injunctive relief is not an appropriate remedy.

Plaintiffs reply that they have standing as political parties and as a candidate in the November, 2020 general election. Plaintiffs assert that a temporary injunction would preserve

the status the parties had when the Secretary of State issued the July 17, 2020 emergency election directive, and the Secretary of State's power to supervise and prescribe is not limited to the promulgation of administrative rules. Plaintiffs further assert that inaction, not an injunction, will threaten the constitutional rights of Linn County voters. Finally, Plaintiffs contend that a bond should not be required. In support of their reply argument, Plaintiffs have submitted a Declaration of Alan R. Ostergren regarding copies of documents submitted in support of the reply, which include an August 25, 2020 letter from the Iowa Secretary of State to the Iowa Attorney General regarding an alleged violation by Defendant of Iowa Code chapter 715C, regarding "Personal Information Security Breach Protection"; a memo to the Iowa Secretary of State regarding application of Iowa Code chapter 715C; and an August 25, 2020 letter from the Iowa Secretary of State to Defendant, which sets forth a "Notice of Technical Infraction and Letter of Instruction," regarding the activities of Defendant complained of by Plaintiffs in this action.

CONCLUSIONS OF LAW

Iowa Rule of Civil Procedure 1.1502 allows temporary injunctions "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 rights respecting the subject of the action and tending to make the judgment ineffectual.

1.1502(3) In any case especially authorized by statute."

I.R.Civ.P. 1.1502. "A petition seeking a temporary injunction shall state, or the attorney shall certify thereon, whether a petition for the same relief, or part thereof, has been previously presented to and refused by any court or justice, and if so, by whom and when." I.R.Civ.P. 1.1504.

"A temporary injunction is a preventive remedy to maintain the status quo of the parties prior to the final judgment and to protect the subject of the litigation." Lewis Investments, Inc. v. City of Iowa City, 703 N.W.2d 180, 184 (Iowa 2005) (citing Kleman v. Charles City Police Dep't, 373 N.W.2d 90, 95 (Iowa 1985)). "The issuance or refusal of temporary injunction rests largely in the sound discretion of the trial court, dependent upon the circumstances of the particular case." Id. (citing Kent Prods. v. Hoegh, 245 Iowa 205, 211, 61 N.W.2d 711, 714 (1953)). "One requirement for the issuance of a temporary injunction is a showing of the likelihood or probability of success on the merits of the underlying claim." Id.

The Iowa Supreme Court has "often noted that '[a]n injunction is an extraordinary remedy which should be granted with caution and only when clearly required to avoid irreparable damage.'" Sear v. Clayton County Zoning Board of Adjustment, 590 N.W.2d 512, 515 (Iowa 1999). "The party seeking the injunction must establish: (1) an invasion or

threatened invasion of a right; (2) that substantial injury or damages will result unless the request for an injunction is granted; and (3) that there is no adequate legal remedy available.” Id. “When considering the appropriateness of an injunction ‘the court should carefully weigh the relative hardship which would be suffered by the enjoined party upon awarding injunctive relief.’” Id. Another factor to be considered is the public interest in granting injunctive relief. Mid-America Real Estate Co. v. Iowa Realty Co., Inc., 406 F.3d 969, 972 (8th Cir. 2005). A party is not entitled to injunctive relief when it has an adequate remedy at law. Lewis, 703 N.W.2d at 185.

The only issue before the Court at this time is whether Plaintiffs are entitled to temporary injunctive relief pending the outcome of this lawsuit. The Court first considers whether Plaintiffs are likely to succeed on their claims. At the outset, Defendant has challenged Plaintiffs’ standing to bring this action. The Iowa Supreme Court has discussed the issue and previous authorities related to standing in detail in Alons v. Iowa Dist. Court for Woodbury County, 698 N.W.2d 858, 863-64 (Iowa 2005). There, the Court stated as follows:

In Citizens for Responsible Choices v. City of Shenandoah, we said that standing to sue means “a party must have ‘sufficient stake in an otherwise justiciable controversy to obtain judicial resolution of that controversy.’” 686 N.W.2d 470, 475 (Iowa 2004) (citations omitted); accord Sanchez v. State, 692 N.W.2d 812, 821 (Iowa 2005). As far as Iowa law is concerned, this means “that a complaining party must (1) have a specific personal or legal interest in the litigation and (2) be injuriously affected.” Id. Having a legal interest in the litigation and being injuriously affected are separate requirements for standing. Id.

Standing is a doctrine courts employ to

refuse to determine the merits of a legal controversy irrespective of its correctness, where the party advancing it is not properly situated to prosecute the action. When standing is put in issue, the question is whether the person whose standing is challenged is a proper party to request an adjudication of the issue and not whether the controversy is otherwise justiciable, or whether, on the merits, the plaintiff has a legally protected interest that the defendant's action has invaded.

59 Am. Jur. 2d Parties § 36, at 442 (2002) (footnotes omitted); see also Hawkeye Bancorporation v. Iowa Coll. Aid Comm’n, 360 N.W.2d 798, 802 (Iowa 1985) (“standing is a self-imposed rule of restraint”).

In short, the focus is on the party, not on the claim. 13 Charles Alan Wright, Arthur R. Miller & Edward H. Cooper, Federal Practice and Procedure § 3531, at 339 (1984) [hereinafter Wright]. Even if the claim could be meritorious, the court will not hear the claim if the party bringing it lacks standing. See Citizens, 686 N.W.2d at 475 (“Whether litigants have standing does not depend on the legal merit of their claims, but rather whether, if the wrong alleged produces a legally cognizable injury, they are among those who have sustained it.”).

Alons v. Iowa Dist. Court for Woodbury County, 698 N.W.2d 858, 863-64 (Iowa 2005).

The Court concludes that, as entities with involvement and interests in the outcome of the November, 2020 general election, including with respect to voter registration and mobilization and having representatives of their political party on the ballot, Plaintiffs have shown a likelihood of being found to have a specific personal or legal interest in this litigation, and shown a likelihood of being injuriously affected, due to the fact that not all counties in Iowa have the finances to create prepopulated ABRs. Thus, Plaintiffs pass the hurdle of standing, when it comes to applying the standards for considering whether a temporary injunction is appropriate. Contrary to Defendant's hearing argument, the Court's prior denial of the Motion to Intervene by the Democratic Senatorial Campaign Committee and the Democratic Congressional Campaign Committee is not inconsistent with this finding of standing. In that Ruling the Court denied the Motion to Intervene on behalf of Defendant, in part, because the proposed intervenors "do not have a legally protected interest that will be impaired or impeded (because) they are not the elected official against whom the narrow claim is stated," and because the issues they cite as a basis for intervening "go beyond the simple question presented in this action." See Order issued August 25, 2020, at p. 3. Therefore, the intervention question focused on the issues, while the standing question focuses on the parties. See Alons, supra.

The Court next considers Plaintiffs' likelihood of success on the merits of their stated claim, i.e., a declaration that Defendant has violated his duty to obey the order of the Iowa Secretary of State contained within the July 17, 2020 directive, and obtain resulting injunctive relief. Iowa Code § 53.2(4)(a)(1)-(6) is titled "Application for ballot," and sets forth requirements as to what an application for an absentee ballot must include (name and signature, date of birth, address where voter is registered to vote, voter verification number, name or date of the election, and any other information necessary to determine the correct absentee ballot for the voter). Although § 53.2 does not specifically state that the application has to be completed by the voter, the fact that it is titled "Application for ballot," uses the phrase "apply" for such a ballot, and requires the signature of voter implies that the Iowa Legislature intended for the information to be included on an application for an absentee ballot to be provided by the voter himself or herself. Moreover, Iowa Code § 53.2(4)(b) provides that if insufficient information is provided, the commissioner of elections is to obtain the missing information. This section was very recently amended to require this contact be *with the applicant*, and provides:

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.

Iowa Code § 53.2(4)(b) (2019) (effective July 1, 2020).

It is implausible to conclude that near total completion of an absentee ballot application by the auditor is authorized under Iowa law where the legislature has specifically forbidden government officials from partially completing the same document. This interpretation is bolstered by the fact that emergency legislative authorization, through the Iowa Legislative Council, was required before the Secretary of State could prepopulate “blank” ABRs with “the Election Date and Type.” The Court concludes that Plaintiffs have a likelihood of showing that the voter himself or herself must complete the ABR form, and that county auditors cannot prepopulate the ABR form for voters.

Iowa Code § 47.1(1) designates the Iowa Secretary of State as the state commissioner of elections, and gives him/her supervisory authority over the activities of county commissioners of elections. The Secretary of State also has the authority to prescribe uniform election practices and procedures, as well as forms, and may exercise emergency powers. See Iowa Code §§ 47.1(1) and (2) (2019). With respect to this case, the Iowa Secretary of State, *with the authority of the legislature*, has specifically ordered county auditors to distribute only blank absentee ballot request forms, which the Court finds to be appropriate, pursuant to the authority granted to the Secretary of State in Iowa Code chapter 47, the provisions of chapter 53 regarding application for an absentee ballot, and the Iowa Legislative Council’s July 17, 2020 approval. Plaintiffs have a likelihood of showing that Defendant’s actions are directly contrary to the statutory directives of the legislature. Plaintiffs correctly point out that the United States Supreme Court has held that “lower federal courts should ordinarily not alter the election rules on the eve of an election.” Republican National Committee v. Democratic National Committee, --- U.S. ---, 140 S.Ct. 1205, 1207, 206 L.Ed.2d 452 (2020). However, as Plaintiffs also point out, they are seeking to enforce an election statute with which Defendant has openly stated (and shown through his words and actions) he will not comply. In his interviews with local media, Defendant’s words could be found to indicate that he was aware of the chance he was taking in sending out prepopulated ABRs, including his statement, “Or is there some law that I broke?” See Attachment B to Motion for Temporary Injunction. While Defendant claims the status quo in Linn County is that each registered voter was mailed a prepopulated ABR, the fact remains that the Iowa Secretary of State, who has supervisory authority over the county commissioners of elections issued a directive regarding the mailing of ABRs, pursuant to the express authority provided by the legislature, and neither Defendant nor any other county auditor (to the Court’s knowledge) challenged the directive as unconstitutional in a court proceeding; and Defendant proceeded with mailing the prepopulated ABRs after the Secretary of State issued his directive. There also is likely to be no merit to Defendant’s argument that the claim for injunctive relief is moot since he already has mailed the prepopulated ABRs; as the Court previously has noted, Defendant himself, in his words to local media and on his Twitter account, appears to have recognized that his actions may have been against the law, and it is irrational to suggest that engaging in a prohibited action can be rendered moot simply because it took place on a massive scale, such as the mailing of prepopulated ABRs to tens of thousands of voters.

Plaintiffs have shown that they have a likelihood of success on the merits of their claim.

Plaintiffs also have demonstrated that they will suffer irreparable harm if an injunction is not entered, since not every county can afford the prepopulated request forms utilized by Defendant, and since different actions by different county auditors will require different actions by Plaintiffs when it comes to things like voter registration, voter mobilization, and the overall integrity of the votes cast. Plaintiffs also have no other adequate legal remedy, because a damages award at a later stage of litigation will do nothing to remedy the potential violation of Iowa law by Defendant. Finally, in balancing the hardships faced by the parties, the Court finds that relief is warranted in favor of Plaintiffs because Plaintiffs are attempting to enforce the valid exercise of power by the Secretary of State and specific statutory directives of the legislature. It is true that significant remedial measures will have to be undertaken by Defendant and his staff to correct the ABRs that were mailed in contradiction to the directive. However, as the Court already has found, Defendant's words and actions show he was aware of the risk he was taking, and the remedial measures are a direct consequence of the risk knowingly taken by Defendant. Granting temporary injunctive relief does not mean that Linn County voters who choose to vote by absentee ballot will lose their right to vote; they simply cannot use the prepopulated ABRs mailed by Defendant, but may acquire an absentee ballot in another manner permitted by Iowa law. The Court also acknowledges that an injunction is an extraordinary remedy which should be granted with caution, but in this case, the Iowa Secretary of State, the individual responsible for supervising the activities of county commissioners of elections issued a clear directive authorized by the legislature, which does not appear to have been challenged as unconstitutional, and Defendant violated that directive. The Court finds this is the type of extraordinary situation in which temporary injunctive relief is appropriate.

Finally, there is the question of bond. Iowa Rule of Civil Procedure 1.1508 provides:

The order directing a temporary injunction must require that before the writ issues, a bond be filed, with a penalty to be specified in the order, which shall be 125 percent of the probable liability to be incurred. Such bond with sureties to be approved by the clerk shall be conditioned to pay all damages which may be adjudged against the petitioner by reason of the injunction. But in actions for dissolution of marriage, separate maintenance, annulment of marriage, or domestic abuse, the court in its discretion may waive any bond, or fix its penalty in any amount deemed just and reasonable.

I.R.Civ.P. 1.1508. The Court construes the language of Rule 1.1508 as requiring a bond of 125% of the probable liability to be incurred. The Court finds that this amount should be nominal, as the "probable liability" to be incurred is not the potential costs thrust onto Linn County taxpayers to remedy Defendant's conduct, rather, the probable liability in this case seems essentially to be the costs of the action, i.e., court costs and filing fees. The Court concludes that a bond amount of \$500.00 is sufficient to cover these amounts and meet the requirements of Rule 1.1508.

The Motion for Temporary Injunction should be granted.

RULING

IT IS THEREFORE ORDERED that Plaintiff's Motion for Temporary Injunction is **GRANTED**. Defendant is temporarily ordered to obey the provisions of Iowa Code § 53.2 and the July 17, 2020 directive of the Iowa Secretary of State, in full; and with respect to any prepopulated ABR forms returned to his office, Defendant shall contact the sender in writing to inform the sender that the prepopulated ABR form should not have been sent in the form provided by Defendant, inform the sender that Defendant is unable to act on the prepopulated ABR form, and invite the sender to submit an ABR form in the manner prescribed by the Iowa Secretary of State. This injunction applies to Defendant, his employees, and any third parties under his control. Plaintiffs shall immediately post a cash or surety bond in the amount of \$500.00. Plaintiffs shall contact the Clerk of Court to determine the most appropriate method for effectuating this process. Once bond has been approved, the Clerk of Court shall issue notice of receipt.

Clerk to notify.



State of Iowa Courts

Type: OTHER ORDER

Case Number **Case Title**
EQCV095986 REPUBLICAN NATIONAL COMMITTEE ETAL VS JOEL MILLER

So Ordered

A handwritten signature in black ink, which appears to read "Ian K. Thornhill". The signature is written in a cursive, flowing style.

Ian K. Thornhill, District Court Judge,
Sixth Judicial District of Iowa