IN THE IOWA DISTRICT COURT IN AND FOR POLK COUNTY

LEAGUE OF UNITED LATIN AMERICAN CITIZENS OF IOWA and TAYLOR BLAIR, **Petitioners,** **vs.** **IOWA SECRETARY OF STATE PAUL PATE, in his official capacity,** **Respondent.**	**Case No. CVCV056608** **RULING ON PETITION FOR JUDICIAL REVIEW**

The above-captioned matter came before the court for oral argument on November 9, 2018. League of United Latin American Citizens of Iowa AND Taylor Blair ("LULAC"; "Petitioners") were represented by Attorneys Gary Dickey and Brian Marshall. Iowa Secretary of State Paul Pate, in his official capacity, ("Secretary"; "Respondent") was represented by Attorneys Matthew Gannon and Alan Nagel. Upon review of the court file, the arguments of counsel, and the applicable law, the court enters the following ruling.

I. FACTUAL FINDINGS

The Iowa legislature passed House File 516 in 2017. Governor Terry Branstad subsequently signed HF 516 into law. HF 516 § 6 amended Iowa Code § 53.2(4)(a), which lists the information that a voter must include in Iowa to vote using an absentee ballot. HF 516 did not change the requirements of Iowa Code § 53.2(4)(b). That section states, "[i]f 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, by the best means available, obtain the 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). Following the enactment of HF 516, the Secretary promulgated Iowa Administrative Code rule 721—21.306, which defined how "best means available" was to be interpreted in Iowa Code § 53.2(4)(b). IAC rule 721—21.306 states, in relevant part, "[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."

On May 30, 2018, LULAC filed a Petition in Law and Equity and for Judicial Review of Agency Action against the Secretary. On July 6, 2018, the court, on LULAC's motion, severed the claim presently before the court from LULAC's other claims. LULAC filed its Amended Petition for Judicial Review on July 16, 2018.

II. STANDARD OF REVIEW

Chapter 17A of the Iowa Code governs judicial review of administrative agency action. The district court acts in an appellate capacity to correct errors of law on the part of the agency. *Meyer v. IBP, Inc.*, 710 N.W.2d 213, 219 (Iowa 2006). Relief is appropriate where "substantial rights of a party have been prejudiced because the agency action [...] is unsupported by substantial evidence, is unreasonable, arbitrary, or capricious, or is affected by other error of law." *Dico, Inc. v. Iowa Emp't Appeal Bd.*, 576 N.W.2d 352, 354 (Iowa 1998). The standard of review on appeal depends on whether the basis for the petition involves an issue of finding of fact, interpretation of law, or application of law to fact. *Meyer*, 710 N.W.2d at 218-19.

When the claim is that an agency made an incorrect interpretation of law, the first question is whether the legislature has clearly vested the agency with the power to interpret the law. If the agency has not been clearly vested with the power to interpret the law, the question is

whether the interpretation is erroneous. Iowa Code § 17A.19(10)(c). If the agency's interpretation is erroneous, the court may substitute its own interpretation. *Meyer*, 710 N.W.2d at 219. The agency is not accorded any deference if it has not been vested with the power to interpret the regulation. Iowa Code § 17A.19(11)(b). If the agency has been vested with the power of interpretation, the court must give appropriate deference to the agency. Iowa Code § 17A.19(11)(c). The court will only overturn the interpretation of an agency that has been vested with that power if the agency's interpretation is irrational, illogical, or wholly unjustifiable. *Iowa Med. Soc. v. Iowa Bd. of Nursing*, 831 N.W.2d 826, 827-28 (Iowa 2013). The court also must set aside an agency action if it is unreasonable, arbitrary, capricious, or an abuse of discretion. Iowa Code § 17A.19(10)(n).

III. APPLICABLE LAW & ANALYSIS

LULAC argues that the Secretary's interpretation of "best means available" in IAC rule 721—21.306 is erroneous. First, LULAC argues that the Secretary is not accorded deference in his interpretation, as he has not been clearly vested with the authority to interpret Iowa Code § 53.2(4)(b). Second, LULAC argues that even if the Secretary has been vested with the authority to interpret the statute, his interpretation is irrational, illogical, and wholly unjustifiable. Finally, LULAC contends that the Secretary's interpretation in IAC rule 721—21.306 is unreasonable, arbitrary, capricious, and an abuse of discretion. The Secretary contends that he has been vested with interpretive authority and that under any standard of deference, his interpretation passes muster.

A. Degree of Deference

LULAC argues that the Secretary's interpretation of "best means available" is not entitled to deference, as the Secretary is not vested with interpretive authority, and the court may overturn the agency action if the Secretary's interpretation is erroneous. The Secretary argues that his interpretation is entitled to deference, and should only be overturned if it is irrational, illogical, or wholly unjustifiable. In order for the Secretary to receive deference, the agency must have been clearly vested with the power to interpret the law. Iowa Code § 17A.19(10)(c). The Iowa Supreme Court has explained that the mere grant of rulemaking authority does not give an agency authority to interpret all statutory language. *Renda v. Iowa Civil Rights Com'n*, 784 N.W.2d 8, 13 (Iowa 2010). "Each case requires a careful look at the specific language the agency has interpreted as well as the specific duties and authority given to the agency with respect to enforcing particular statutes." *Id*.

The Secretary is the state commissioner of elections. Iowa Code § 47.1(1). According to Iowa Code § 47.1(1), the Secretary "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." Iowa Code § 53.2(4)(b) states, "[i]f 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, by the best means available, obtain the 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." Neither of these code sections expressly grants the Secretary with interpretive authority. Though the Secretary has been granted with rulemaking

authority, it does not necessarily follow that the Secretary has been vested with interpretive authority.

The "best means available" requirement in § 53.2(4) has been present in variations of the statute for over forty years. There is no statute that expressly gives the Secretary the power to interpret § 53.2(4). The legislature evinced its ability to grant specific authority to the Secretary when it enacted the current iteration of the statue. The legislature specifically vested the Secretary with rulemaking authority in HF 516 §§ 18, 20, 29, 37, and 40. The legislature, did not, however, specifically vest the Secretary with rulemaking authority in HF § 6. Likewise, the legislature did not expressly grant the Secretary interpretive authority. The legislature has never expressly vested the Secretary with authority to interpret the requirements of Iowa Code § 53.2(4).

Though the legislature has not vested the Secretary with broad or express interpretive authority, the Iowa Supreme Court has given some guidelines that courts can follow in determining whether authority has nevertheless been vested. The Court held that "when the statutory provision being interpreted is a substantive term within the special expertise of the agency […] the agency has been vested with the authority to interpret the provisions." *Renda*, 748 N.W.2d at 14. The Court also said, "[w]hen the provisions to be interpreted are found in a statute other than the statute the agency has been tasked with enforcing, we have generally concluded interpretive power was not vested in the agency." *Id*. The Court went on to explain, "[w]hen a term has an independent legal definition that is not uniquely within the subject matter expertise of the agency, we generally conclude the agency has not been vested with interpretive authority." *Id*.

The court finds that "best means available" is not a substantive term within the special expertise of the agency. LULAC has pointed to three other places where the Iowa legislature or Iowa courts have used or interpreted a variation of "best means." *See* Iowa Code § 15E.116 ("The board shall advise the authority on the best means to promote wine and beer made in Iowa."); Iowa Session Law 2004 ch. 1083 § 33 (amending Iowa Code § 53.17) (repealed June 30, 2007) (requiring "absentee ballot couriers" to provide "best means" of contact); *cf. Pundzak, Inc. v. Cook*, 500 N.W.2d 424, 424 (Iowa 1993) (interpreting term of contract requiring party to us "best efforts"). Best means available is not a term that is "uniquely within the subject matter expertise of the agency." Further, "best means available" has been present within the different versions of Iowa Code § 53.2(4) for over forty years. Never before has interpretation of "best means available" required the specific expertise of the Secretary. Common understanding of the term has sufficed to give appropriate instruction to commissioners up until now. The court finds that the Secretary has not been clearly vested with authority to interpret Iowa Code § 53.2(4)(b).

B. The Interpretation is Erroneous

The Secretary has not been clearly vested with the authority to interpret Iowa Code § 53.2(4)(b), so the question before the court is whether the Secretary's interpretation was erroneous. Iowa Code § 17A.19(10)(c). The court finds that the Secretary's interpretation was erroneous. After Iowa Code § 53.2(4) was enacted in its current form, the Secretary adopted Iowa Administrative Code rule 721—21.306. IAC 721-21.306 defines "best means available" as "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." Specifically, LULAC takes issue with the regulation that "commissioners may not use the voter registration system to obtain the

information," as LULAC claims that the Secretary has not provided justification for this seemingly inconsistent addition to the definition of "best means available."

The court finds that the Secretary's interpretation is erroneous. Forbidding commissioners from using the voter registration system entirely is a direct contradiction of the term "best means available." It well may be that the best means available to a commissioner upon receipt of an absentee ballot that lacks the required information is utilization of the voter registration system. If accessing the voter registration system is the best means available to a commissioner, Iowa Code § 53.2(4)(b) requires the commissioner to use that system. Prohibiting commissioners from using a frequently used means to obtain the necessary information that they are required to obtain is in contradiction of the requirement that commissioners use the best means at their disposal to obtain that information. The Secretary's interpretation is erroneous.

C. The Interpretation is Irrational, Illogical, and Wholly Unjustifiable

The court finds even if the Secretary has been clearly vested with the authority to interpret Iowa Code § 53.2(4)(b), his interpretation is irrational, illogical, or wholly unjustifiable. An agency is accorded a high level of deference in its interpretation if it has been vested with interpretive authority. Though an agency is accorded a high level of deference, its interpretation must still be overturned if irrational, illogical, or wholly unjustifiable. *Iowa Med. Soc*, 831 N.W.2d at 827-28. The court finds the Secretary's interpretation of "best means available" fails to pass even this standard of deference.

As noted above, prohibiting commissioners from using the voter registration system to obtain the required information directly contradicts the requirement that commissioners use the best means available to obtain the information. County auditors were not prohibited from using the voter registration system to obtain the information during the entire history of the statute's

existence. The Secretary has not offered any explanation for prohibiting use of the voter registration system that would take it out of the realm of being irrational, illogical, or wholly unjustifiable. The Secretary points to the reliability of contacting voters directly for their information, yet fails to acknowledge that even without the prohibition of using the voter registration system, county auditors are still free to contact voters directly. Iowa Code § 53.2(4)(b) requires county auditors to obtain the information using the best means available. It is therefore irrational, illogical, and wholly unjustifiable to proscribe one method of doing so that has been used for the last forty years.

D. The Regulation is Arbitrary, Capricious, and an Abuse of Discretion

The court finds that the regulation is also unreasonable, arbitrary, capricious, and an abuse of discretion. Iowa Code § 17A.19(10)(n) requires the court to grant relief from agency action if it determines that substantial rights of the person seeking judicial relief have been prejudiced because the agency action is unreasonable, arbitrary, capricious, or an abuse of discretion. "An agency's action is arbitrary or capricious when it is taken without regard to the law or facts of the case […] Agency action is unreasonable when it is clearly against reason and evidence. An abuse of discretion occurs when the agency action rests on grounds or reasons clearly untenable or unreasonable." *Dico, Inc. v. Iowa Emp't Appeal Bd.*, 576 N.W.2d 352, 355 (Iowa 1998)(internal citations omitted). "An abuse of discretion is synonymous with unreasonable, and involves lack of rationality, focusing on whether the agency has made a decision clearly against reason and evidence." *Id*.

Requiring a commissioner to contact the voter directly by mail, phone, email, or in person rather than using the voter registration system when said system may very well be the best means available is unreasonable, arbitrary, capricious, and an abuse of discretion. The

Secretary's purported rationale behind this regulation is unreasonably disproportional to the regulation's effects. The Secretary argues that the accuracy of contacting a voter directly mandates the prohibition of the use of the voter registration system for collecting missing information. This conclusion is untenable and unreasonable. Commissioners are tasked with obtaining the missing information through use of the best means available, and the voter registration system may provide those commissioners with the best access to that information. The Secretary's decision to prohibit the use of the voter registration system is clearly against reason and evidence. The regulation is unreasonable, arbitrary, capricious, and an abuse of discretion.

IV. ORDER

IT IS THEREFORE ORDERED that the Petition for Judicial Review is GRANTED and Iowa Administrative Code Rule 721—21.306(53) is unlawful and permanently enjoined from taking effect.

Costs to Respondent.

State of Iowa Courts

Type: OTHER ORDER

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CVCV056608	LEAGUE OF UNITED LATIN AMER VS IOWA SECRETARY OF STATE

So Ordered

Karen A. Romano, District Court Judge,
Fifth Judicial District of Iowa