

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

<p>LEAGUE OF UNITED LATIN AMERICAN CITIZENS OF IOWA Plaintiff, v. IOWA SECRETARY OF STATE PAUL PATE, in his official capacity, and IOWA ATTORNEY GENERAL THOMAS MILLER, in his official capacity, Defendants.</p>	<p>No. CVCV061476 REPLY TO RESISTANCE TO MOTION TO INTERVENE</p>
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Proposed intervenors submit this reply to the resistance to their motion to intervene.

I. Iowa courts have allowed intervention by political parties in actions challenging the constitutionality of election laws.

LULAC attempts to sidestep the fact that the proposed intervenors were allowed to intervene in an action challenging the constitutionality of Iowa's election laws only seven months ago, *LULAC and Majority Forward v. Iowa Secretary of State Paul Pate*, Johnson County No. CVCV081901 (hereinafter, "LULAC I"), while attempting to force an inapt comparison to the denial of intervention in a series of extremely short-lived emergency actions brought against county clerks who were failing to faithfully execute the requirements of Iowa's election laws, *RNC, et al., v. Johnson County Auditor Travis Weipert*, Johnson County No. CVCV081957; *RNC, et al. v. Linn County Auditor Joel Miller*,

Linn County No. EQCV095986; and *RNC, et al. v. Woodbury County Auditor Patrick Gill*, Woodbury County No. EQCV193154. Because this case is a constitutional challenge to Iowa's election laws that lacks the extreme time pressure of the county auditor cases, this court should follow the example set by the District Court for Johnson County, and grant proposed intervenors' motion to intervene.

The 2020 general election saw four lawsuits related to rules about absentee ballot applications. LULAC and an allied group filed the first case on July 14, 2020. *LULAC I*. The case sought to enjoin enforcement of recently passed legislation that generally prohibited county auditors from processing incomplete or inaccurate absentee ballot request forms and required auditors to contact the voter and obtain the correct information from him or her. *See*, 2020 Iowa Acts, Ch. 1121, §§ 123 and 124 (H.F. 2643, 88th G.A.) Proposed intervenors here (plus the reelection campaign of President Trump) sought to intervene in the case on July 24, 2020. LULAC and Majority Forward resisted intervention on August 7, 2020 and requested a temporary injunction three days later. The Johnson County district court permitted the Republican groups to intervene on September 8, 2020. “Like Plaintiffs, the proposed Intervenors have interests in the voting rights of their members, and the proposed Intervenors have and will make contributions and expenditures to mobilize voter turnout. The questions of the constitutionality of HF 2643 impact the interests of the

proposed Intervenors in voter mobilization, including with respect to educating voters about the requirements of HF 2643.” (District Court order granting intervention 7).

While the motion to intervene in *LULAC I* was pending, a separate issue arose when three county election auditors began sending prepopulated absentee ballot request forms to voters in violation of an emergency election directive¹ of the Secretary of State.² The directive ordered auditors to not send prepopulated absentee ballot request forms to voters, an action that would have circumvented the legislature’s purpose in enacting H.F. 2643. Between August 10, 2020 and August 14, 2020, the proposed intervenors (again, plus the Trump campaign) filed actions against Iowa county auditors seeking an immediate injunction ordering the county auditors to refrain from sending any further prepopulated absentee ballot request forms. *RNC, et al., v. Johnson County Auditor Travis Weipert*, Johnson County No. CVCV081957; *RNC, et al. v. Linn County Auditor Joel Miller*, Linn County No. EQCV095986; and *RNC, et al. v. Woodbury County Auditor Patrick Gill*, Woodbury County No. EQCV193154.

LULAC and Majority Forward sought to intervene in all three county auditor cases. And it is true that the RNC and affiliated groups resisted intervention. This was because LULAC and Majority Forward made it clear from their intervention papers that they sought to litigate the constitutionality of H.F. 2643 rather than the duty of a

¹ <https://www.legis.iowa.gov/committees/meetings/minutes?meetingID=32076>

² <https://www.desmoinesregister.com/story/news/politics/2020/07/17/iowa-secretary-state-paul-pate-mail-absentee-ballot-request-form-registered-voters-covid-19-pandemic/5458727002/>

county auditor to obey the Secretary of State's emergency election directive. The district courts in Johnson and Linn counties denied intervention on this basis. (Order denying intervention, *RNC v. Weipert*, August 24, 2020; Order denying intervention, *RNC v. Miller*, August 21, 2020). The district court in Woodbury County denied intervention on the merits but permitted LULAC and Majority Forward to be heard on the appropriate remedy if the court enjoined the auditor. (Order granting partial intervention, *RNC v. Gill*, August 25, 2020).

The Linn County district court denied intervention by LULAC and Majority Forward on August 21, 2020. Three days later those groups filed a motion to reconsider. At the same time, *and represented by the same attorneys*, the Democratic Senatorial Campaign Committee, the Democratic Congressional Campaign Committee, and two Linn County voters filed a motion to intervene. The district court denied the motion to reconsider and the new motion to intervene. The Republican plaintiffs did not resist the new motion to intervene because there was no opportunity to do so before the district court denied the motion.

The Johnson County case proceeded the same way. The district court denied LULAC and Majority Forward's motion to intervene on August 24, 2020. The same Democratic groups and a Democratic state legislator filed a motion to intervene on

August 26, 2020. The district court denied their motion the following day. Again, the Republican plaintiffs did not have time to resist the motion before it was denied.³

When the Johnson County district court permitted the Republican groups to intervene in *LULAC I* the court distinguished between its decision and the denials of intervention in the county auditor cases. The constitutional claims raised in *LULAC I* were decisive. “The Court concludes that this case differs from those cases on the question of intervention, in that those cases were not pled to include the broad constitutional claims asserted by Plaintiffs in this case.” (District Court order granting intervention 7). “Like Plaintiffs, the proposed Intervenors have interests in the voting rights of their members, and the proposed Intervenors have and will make contributions and expenditures to mobilize voter turnout. The questions of the constitutionality of HF 2643 impact the interests of the proposed Intervenors in voter mobilization, including with respect to educating voters about the requirements of HF 2643.” *Id.*

³ In the end, the denial of intervention to LULAC and Majority Forward was but a minor inconvenience. After the district courts granted temporary injunctions against the Linn and Woodbury county auditors, LULAC and Majority Forward’s attorneys took over the defense of those county auditors and sought review in the Iowa Supreme Court. Their participation was short lived, however, as the Iowa Supreme Court unanimously affirmed the grant of temporary injunctions (with one Justice concurring in the result only). Their original case fared no better. The Johnson County District Court denied a temporary injunction. This, too, was brought before the Iowa Supreme Court. That Court affirmed the denial in a 4-3 decision. Shortly after the 2020 general election (in which none of the election administration problems or so-called “voter suppression” predicted by the lawsuit actually happened), LULAC and Majority Forward dismissed their Johnson County case.

When viewed in light of this clear distinction between *LULAC I* and the county auditor cases, LULAC's generalized fairness objections to the proposed intervenors intervention falls apart. It was denied intervention on the merits of the county auditor cases, because they were moving at an accelerated pace, LULAC and its similarly aligned Democratic Party committees wanted to litigate something other than the issues presented in the three county auditor cases, and those cases did not directly involve challenges to the constitutionality of any Iowa law. As the Johnson County district court recognized in LULAC's litigation last year, political groups have an interest in the constitutionality of election laws. If LULAC had standing to bring the Johnson County case and has standing to bring this case, then the Republican groups have a proper basis to intervene.

The motion for intervention should be granted.

/s/ Alan R. Ostergren
Alan R. Ostergren
500 Locust St., Suite 199
Des Moines, Iowa 50309
(515) 207-0134
alan.ostergren@ostergrenlaw.com