

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

DSCC, DCCC, and the IOWA DEMOCRATIC PARTY	Case No. CVCV060642
Petitioners,	RULING ON PETITIONERS’ EMERGENCY MOTION TO STAY AGENCY ACTION
v.	
IOWA SECRETARY OF STATE PAUL PATE, in his official capacity,	
Respondent.	

The above-captioned matter came before this Court for hearing on September 18, 2020. Petitioners were represented by attorneys Kevin J. Hamilton and Matthew Sahag. Assistant Iowa Attorneys General Thomas J. Ogden, Jeffrey Thompson, and Matthew Gannon appeared for Respondent. Having entertained the arguments of counsel, having reviewed the court file, including the briefs and evidence provided by the parties, and being otherwise fully advised in the premises, the Court now rules and, for the reasons stated herein, **GRANTS** petitioners’ motion.

FACTS AND PROCEEDINGS

Petitioners are political organizations¹ with involvement and interest in the November, 2020 general election, including having candidates on the ballot at all levels of said election. Respondent Paul Pate (hereinafter “Secretary Pate”) is the current Iowa Secretary of State.

The Iowa Secretary of State (hereinafter “the Secretary”) is designated as the state commissioner of elections and is to supervise the activities of the county commissioners of elections. Iowa Code § 47.1(1) (2019). Section 47.1(1) states 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

¹ The Petitioners’ acronyms stand for the Democratic Senatorial Campaign Committee (DSCC) and Democratic Congressional Campaign Committee (DCCC).

purposes, and shall adopt rules, pursuant to chapter 17A, to carry out this section.

The Secretary 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 . . . [and] during an armed conflict involving the United States armed forces. . . .” *Id.* at 47.1(2). The Secretary shall adopt rules describing the emergency powers and situations in which the powers will be exercised. *Id.* at 47.1(4). In the case of federal elections,

Emergency measures shall be limited to relocation of polling places, modification of the method of voting, reduction of the number of precinct election officials at a precinct and other modifications of prescribed election procedures which will enable the election to be conducted on the date and during the hours required by law.

Iowa Admin. Code r. 721-21.1(12).

Since 1990, all Iowa voters have had the right to vote absentee under Iowa Code section 53.2(1)(a). The Secretary “shall prescribe a form for absentee ballot application. 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.” Iowa Code § 53.2(2)(a). No absentee ballot application “shall be preaddressed or printed with instruction to send the application to anyone other than the appropriate commissioner.” *Id.* at 53.2(2)(b). In addition, no absentee ballot application “shall be preaddressed or printed with instruction to send the ballot to anyone other than the voter.” *Id.* at 53.2(2)(c). The information required to be on the ballot application is the name, signature, and date of birth of the registered voter, address where the voter is registered to vote, the voter’s verification number, the name or date of the election for which the ballot is being requested, and any other information necessary to determine the correct absentee ballot for the registered voter. Iowa Code § 53.2(4)(a)(1-6). “Voter verification number” means the voter’s driver’s license

number, non-operator's identification number, or the number assigned to the voter by the Secretary under section 47.7(2). *Id.* at 53.2(4)(c).

Recognizing the serious risk of harm in Iowa voters' potential exposure to the novel coronavirus (COVID-19) by in-person voting, Secretary Pate strongly urged Iowans to vote absentee by mail for the June 2, 2020 primary elections. He advised that the "safest way to vote will be by mail." Press Release, Office of the Secretary of State, "Secretary Pate to mail absentee ballot request form to every registered voter" (Mar. 31, 2020), https://sos.iowa.gov/news/2020_03_31.html. Ahead of the June primary, Secretary Pate sent out absentee ballot request forms to all active Iowa voters. *Id.*

On June 25, 2020, Governor Kim Reynolds signed HF 2486 into law. Among other things, HF 2486 amended Iowa Code section 47.1(2) to require that when the Secretary is exercising emergency powers "to alter any conduct of an election" he had to obtain the approval of the Legislative Council. HF 2486 § 3; Iowa Code § 47.1(2)(a). The Legislative Council is made up of 24 members of the general assembly and is currently Republican controlled, as is the Iowa General Assembly. *See* Iowa Code § 2.41. The Council performs various administrative-type responsibilities when the general assembly is both in and out of session. *See* Iowa Code § 2.42. HF 2486 further provided that if the Legislative Council does not approve of the Secretary's use of emergency powers, it may choose to present and approve its own election procedures or to take no action. *Id.* at 47.1(2)(4). On June 30, 2020, Governor Reynolds signed HF 2643. This changed Iowa Code section 53.2(4)(b) to require that when county auditors receive an absentee ballot application that is missing or has incorrect information, the auditor must follow a set of prescribed steps to attempt to contact the voter. HF 2643 § 124; Iowa Code § 53.2(4)(b). Prior section 53.2(4)(b) provided that the auditors were to obtain the necessary missing information by using

the “best means available.” HF 2643 also prohibits the use of the voter registration system to obtain any of the additional necessary information on the absentee ballot request. HR 2643 § 124.

Secretary Pate sought to once again send absentee ballot request forms to every registered voter for the general election. However, on July 1, 2020, the Legislative Council rejected the proposal. Kathie Obradovich, *GOP lawmakers defeat new proposal to allow secretary of state to distribute ballot request forms*, IOWA CAPITAL DISPATCH (July 1, 2020), <https://iowacapitaldispatch.com/2020/07/01/gop-lawmakers-defeat-new-proposal-to-allow-secretary-of-state-to-distribute-ballot-request-forms/>. Senate Majority Leader Jack Whitver (R-Ankeny), stated during the meeting that although the Secretary could not send out applications, county auditors could. State of Iowa Legislative Council Minutes, *Emergency Election Directive — Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA)* at 2 (July 1, 2020) (statement of Sen. Jack Whitver), <https://www.legis.iowa.gov/committees/meetings/minutes?meetingID=32074>.

On or about July 6, 2020, county auditors for seven of Iowa’s largest counties, Polk, Scott, Black Hawk, Dubuque, Johnson, Linn, and Woodbury, announced they would send forms to all voters in their counties. Anticipating a continued increase in mail-in ballots due to COVID-19, auditors in Linn, Johnson, and Woodbury Counties stated their intention to send pre-filled ballot request forms to active voters in their counties to facilitate voting and reduce administrative burdens to their offices.

On July 17, 2020, the Legislative Council reversed its earlier position and gave Secretary Pate approval to send out absentee ballot applications to all registered voters in the state for the general election. On that same date, Secretary Pate issued an Emergency Election Directive (the Directive). Plaintiff’s Ex. 8. The Directive has four sections. Section 1 authorizes Coronavirus

Aid, Relief, and Economic Security (CARES) Act funds to be used to mail absentee ballot request forms to Iowa's active registered voters for the general election, which "shall be blank except for the Election Date and Type." *Id.* Section 2 requires county auditors to distribute only the "blank Official State of Iowa Absentee Ballot Request Form pursuant to Iowa Code §53.2(2)(a)." *Id.* It states this is to "ensure uniformity and to provide voters with consistent guidance on the absentee ballot application process." *Id.* Section 3 allows Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) voters to electronically transmit absentee ballots to their auditors. Finally, Section 4 protects the right to vote for Iowans admitted to health care facilities by waiving the deadline to request a ballot for such persons. *Id.*

On July 20, 2020, as they had publicly stated they would two weeks earlier, the Linn, Woodbury, and Johnson County auditors started mailing their pre-filled absentee ballot applications. Petitioners stated that collectively these auditors have sent out more than 200,000 pre-filled request forms to their counties active voters, and as of July 28, 2020, received 65,000 signed request forms in response. Secretary Pate at no point has taken any legal action to stop the auditors from mailing pre-filled forms.

On August 10, 2020, the Republican National Committee, Donald J. Trump for President, Inc., National Republican Senatorial and Congressional Committees, and the Republican Party of Iowa, filed Petitions for Declaratory and Injunctive Relief in Linn and Johnson Counties against those counties' respective auditors, and against the Woodbury County auditor on August 14, 2020. Pet., *Republican Nat'l Comm. v. Miller*, No. EQCV09586 (Iowa Dist. Ct. Linn Cnty. Aug. 10, 2020); Pet., *Republican Nat'l Comm. v. Weipert*, No. CVCV081957 (Iowa Dist. Ct. Johnson Cnty. Aug. 10, 2020); Pet., *Republican Nat'l Comm. v. Gill*, No. EQCV193154 (Iowa Dist. Ct. Woodbury Cnty. Aug. 14, 2020). The Republican plaintiffs in those cases sought temporary

injunctions ordering each auditor to follow the Directive and other “immediate remedial measures.” Petitioners DSCC and DCCC sought to intervene in the Linn and Johnson County cases and their motions to intervene were denied. Order, *Republican Nat’l Comm. v. Miller*, No. EQCV09586 (Iowa Dist. Ct. Linn Cnty. Aug. 25, 2020); Order, *Republican Nat’l Comm. v. Weipert*, No. CVCV081957 (Iowa Dist. Ct. Johnson Cnty. Aug. 26, 2020). In the Linn County case Petitioners sought emergency interlocutory appeal, which was also denied. Order, *Republican Nat’l Comm. v. Miller*, No. 20-1091 (Supreme Ct. Iowa Aug. 27, 2020).

The above listed Republican plaintiffs’ requests for injunction were granted by the District Courts in each of these cases. See Order, *Republican National Committee, et al. v. Miller*, Linn County No. EQCV095986 (Iowa D. Ct. Aug. 27, 2020); Order, *Republican National Committee, et al. v. Weipert*, Johnson County No. EQCV081957 (Iowa D. Ct. Sept. 12, 2020); Order, *Republican National Committee, et al. v. Gill*, Woodbury County No. EQCV193154 (Iowa D. Ct. Aug. 28, 2020). Each of these injunctions were premised on the conclusion that the auditors had violated the Directive, which was found to have been issued lawfully. In none of these cases were any issues related to the constitutionality or authority of Secretary Pate to issue the Directive raised or addressed. Moreover, Secretary Pate was not a party to any of these actions. The county auditors filed interlocutory appeals in the Linn and Woodbury cases. The Iowa Supreme Court denied those requests on September 16, 2020. Order, *Republican Nat’l Comm. et al v. Gill et al*, No. 20–1169 (Iowa Supreme Court Sept. 16, 2020); Order, *Republican Nat’l Comm. et al v. Miller*, No. 20–1140 (Iowa Supreme Court Sept. 16, 2020).

Petitioners filed a Petition for Judicial Review of Agency Action with this Court on August 31, 2020, challenging the legality of Secretary Pate’s Directive. They allege the Directive is in violation of: (1) Iowa Code section 17A.19(10)(a) because it is unconstitutional on its face or as

applied; (2) 17A.19(10)(b) as it is beyond the authority delegated to the agency by any provision of law or in violation of any provision of law; (3) 17A.19(10)(c) because it is based upon an erroneous interpretation of a provision of law whose interpretation has not been clearly vested in the discretion of the agency; (4) 17A.19(10)(d) in that it is based upon a procedure or decision-making process prohibited by law or taken without following the prescribed procedure or decision-making process; (5) 17A.19(10)(i) because it is the product of reasoning that is so illogical as to render it wholly irrational; and (6) 17A.19(10)(j) in that it is the product of a decision-making process in which the agency did not consider a relevant and important matter that a rational decision maker in similar circumstances would have considered prior to taking this action.

Petitioners then filed the present Emergency Motion to Stay Agency Action and brief in support on September 3, 2020. They asked this Court to stay Section 2 of Secretary Pate's Directive pending further proceedings and enjoin Secretary Pate, his respective agents, officers, employees, successors, and all persons acting in concert with each and any of them from implementing, enforcing, or giving any effect to the Directive. More specifically, Petitioners allege (1) Secretary Pate exceeded his authority in issuing the Directive whether done under Iowa Code section 47.1(1) or 47.1(2)(a) and (4), (2) the Directive contradicts lawfully enacted statutes and thus is unenforceable, and (3) the Directive unconstitutionally violated the county auditors' home rule authority. They argue they are likely to succeed on the merits of their claims, they will suffer irreparable harm absent an immediate stay, the harm to Secretary Pate is *de minimus*, and the public interest relied on by Secretary Pate is not sufficient to justify the Directive. Respondent filed a Resistance to Petitioners' Emergency Motion to Stay Agency Action and a brief in support on September 17, 2020. Plaintiffs filed a reply brief on September 18, and supplemental briefing on September 22, 2020.

CONCLUSIONS OF LAW

“Agency means each board, commission, department, officer, or other administrative office or unit of the state.” Iowa Code § 17A.2(1). Only the “general assembly, the judicial branch or any of its components, the office of the consumer advocate, the governor, or a political subdivision of the state or its offices and units” are exempted from coverage as an agency. *Id. See also Basik Five Tr. v. Culver*, 728 N.W.2d 852, 2007 WL 108898 *3 (“[T]he Secretary of State is an agency under the Iowa APA.”). As such, the Court concludes the Secretary is an agency under the Iowa Administrative Procedures Act (APA). It further concludes the definition of agency action is extremely broad and includes the Directive at issue here. Iowa Code §17A.2(2); *see also Sindlinger v. Iowa State Bd. of Regents*, 503 N.W.2d 387, 389 (Iowa 1993) (“Agency action is a broad classification . . . and includes rule making, adjudication . . . and the performance of any other agency duties.”). Petitioners do not need to exhaust their administrative remedies when they would suffer “irreparable injury resulting from following the administrative process.” *Salsbury Labs. v. Iowa Dep’t of Env’tl. Quality*, 276 N.W.2d 830, 837 (Iowa 1979). The Directive involves potential disenfranchisement, through no fault of the voter. The Iowa Constitution protects the “right of suffrage.” Iowa Const. art. II § 1. This right could potentially be lost if Petitioners were forced to delay by following the administrative process. In addition, monetary damages would not provide Petitioners with an adequate remedy for the loss of potential voting rights. Accordingly, the Court concludes Petitioners do not need to exhaust their administrative remedies here and immediate judicial review of Petitioners’ claims is appropriate.

Iowa Code Section 17A.19 governs judicial review of agency action. Iowa Code section 17A.19(5) “plainly makes the issuance of [a] stay discretionary.” *Grinnell Coll. v. Osborn*, 751 N.W.2d 396, 398 (Iowa 2008); *Teleconnect Co. v. Iowa State Commerce Comm’n*, 366 N.W.2d

511, 513 (Iowa 1985). For that reason, appellate court's review of the district court's decision whether to stay agency action under section 17A.19(5) is for abuse of discretion. *Id.* To determine whether a stay or other temporary remedies should be entered pursuant to Iowa Code section 17A.19(5)(c), the Court must consider and balance the following factors:

- (1) The extent to which the applicant is likely to prevail when the court finally disposes of the matter.
- (2) The extent to which the applicant will suffer irreparable injury if relief is not granted.
- (3) The extent to which the grant of relief to the applicant will substantially harm other parties to the proceedings.
- (4) The extent to which the public interest relied on by the agency is sufficient to justify the agency's action in the circumstances.

Iowa Code § 17A.19(5)(c); *Grinnell Coll.*, 751 N.W.2d at 402-03. It is Petitioners' burden to present evidence establishing the prerequisites for a stay. *Grinnell Coll.*, 751 N.W.2d at 403.

“A stay can be granted where the likelihood of success is not high but the balance of hardships favors the applicant. In other words, more of one factor excuses less of another factor.” *Id.* at 402 (citations omitted). *See also Annett Holdings, Inc. v. Pepple*, 823 N.W.2d 418(Table), 2012 WL 4901102 *2 (Iowa Ct. App. Oct. 17, 2012) (“The applicant need not show that it will eventually prevail in judicial review, but the court will consider the extent or range of the likelihood of success. . . . Proof of one factor can excuse another that is lacking and, ultimately, the stay can be granted when the balance of hardships weighs in favor of the applicant.”).²

As indicated by the aforementioned authorities, there is a relationship between the factors of likelihood of success on the merits and the extent to which the applicant will suffer irreparable injury if a stay is not granted. Therefore, the Court will address these factors together. Petitioners claim that Secretary Pate's Directive prejudices their substantial rights. Petitioners are local and

² The Court recognizes that *Annett* is an unpublished opinion and, therefore, not binding precedent. However, the Court finds its reasoning persuasive.

national committees of the Democratic Party whose mission is to support the election efforts of Democratic candidates, including those in and from Iowa. The Directive will have a negative effect on Petitioners in that it will require them to divert substantial resources to the educating of tens of thousands of voters who are under the impression that they have already done all that was necessary to request an absentee ballot – by verifying and returning the prefilled request forms supplied to them by their respective county auditors. They will likely be confused upon being informed that such is not the case and that they will need to complete and return a new form in order to receive an absentee ballot. Indeed, some may give up and not vote at all, particularly if voting involves forgoing the relative safety of voting by mail and going to the polls on Election Day, thereby exposing themselves to infection with the COVID virus. This prospect will force Petitioners to make additional “get-out-the-vote” efforts to counteract the aforementioned confusion and resultant reluctance to vote. This will directly harm Petitioners in the form of decreased turnout because it will likely disproportionately affect younger and minority voters who based on historical statistics are more likely to support Democratic candidates. Petitioners support these claims with the declarations they have submitted in support of their Motion for Stay as well as legal authorities supporting the proposition that requirements like those imposed by the Directive will result in irreparable harm. *See* Schaumburg Decl. ¶¶ 7–10, 13; Newman Decl. ¶¶ 8–11, 14; Smith Decl. ¶¶ 7–11 (Directive will cause significant diversion of Petitioners’ organizational resources, confusion among Petitioners’ constituents and members, and depress the turnout of voters likely to favor Petitioners’ candidates). *See also League of Women Voters of United States v. Newby*, 838 F.3d 1, 9, 13 (D.C. Cir. 2016) (finding proof-of-citizenship requirement on voter registration forms caused irreparable harm to voting rights organizations because it would “likely impair their efforts to register voters,” imposing “programmatically injury”

through increased “expenditures” to combat the harms the requirement caused to individual voters); *N.C. State Conference of the NAACP v. State Bd. of Elections*, 2016 WL 6581284, at *9 (M.D.N.C. Nov. 4, 2016) (finding organization’s diversion of resources in response to a state’s federal election law violations “perceptibly impair[ed] [its] ability to mobilize, educate and protect voters before and during the general election,” satisfying a showing of irreparable harm) (citations and quotation marks omitted). The Court also notes that the various entities that unsuccessfully moved to intervene in this action made identical arguments in support of their assertion that they had a legally protected interest that might be impaired or impeded by this action and that, therefore, they should be allowed to intervene herein as a matter of right.

Respondent has taken the position that Petitioners have not shown and cannot show that they have suffered or will suffer irreparable harm as a result of the Directive. He contends that any harm Petitioners have suffered or might suffer is not the result of the Directive, rather it is the result of the Linn County, Johnson County, and Woodbury County auditors’ actions in defiance of the Directive. Respondent further points out that Petitioners waited to file the instant Application for Judicial Review until said auditors had acted in defiance of the Directive and had been enjoined from accepting returned pre-filled ballot requests. However, the Court would note that the Republican plaintiffs that sought temporary injunctive relief in the cases in the other counties discussed above *themselves* waited to file their petitions for injunctive relief for *over a month* after those counties’ auditors publicly announced their intentions to send pre-filled absentee ballot request forms to active voters in said counties. It is further noted that Secretary Pate has not, at least to this Court’s knowledge, ever taken any action to enforce his emergency Directive. While the Court is not suggesting that the Linn County, Johnson County, or Woodbury County auditors would intentionally violate the terms of a lawfully entered injunction, the fact remains

that the subject injunctions are not self-enforcing and enforcement of same would require some affirmative action by Secretary Pate or the parties who actually obtained those injunctions. Finally, Respondent admitted at hearing that said auditors could move to dissolve the aforementioned injunctions if/when they believe the grounds for doing so existed. *Cf.* Iowa R. Civ. P. 1.1509 (A “party against whom a temporary injunction is issued without notice may, at any time, move the court where the action is pending to dissolve, vacate or modify it.”).

Returning to the likelihood of success on the merits, Petitioners argue the following:

- 1) Secretary Pate’s authority per Iowa Code section 47.1(1) does not authorize his issuance of the subject Directive;
- 2) Neither Secretary Pate’s authority per Iowa Code sections 47.1(2) (a) and (4) nor his previously enacted emergency powers authorize the subject Directive;
- 3) The Directive contradicts one or more lawfully enacted statutes and is, therefore, unenforceable; and
- 4) The Directive violates the subject auditors’ home rule authority.

Respondent responds with the following arguments:

- 1) Petitioners’ Application for Judicial Review is moot;
- 2) Secretary Pate is not required to follow the administrative rulemaking process in exercising his statutorily authority to supervise county auditors;
- 3) The Directive was a valid exercise of Secretary Pate’s emergency powers;
- 4) The Directive does not violate any Iowa statutes identified by Petitioners;
- 5) Petitioners lack standing to assert in this action the rights of county auditors; and
- 6) The Directive does not violate the auditors’ home rule authority.

Respondent alleges the case is moot because this Court has no authority or jurisdiction to

dissolve the injunctions discussed above that were issued in Linn, Johnson, and Woodbury Counties. “A case is moot if it no longer presents a justiciable controversy because the issues involved are academic or nonexistent.” *Iowa Bankers Ass’n v. Iowa Credit Union Dep’t*, 335 N.W.2d 439, 442 (Iowa 1983). However, the fact that temporary injunctive relief has been ordered by other Iowa District Courts in other pending matters does not render the instant Motion for Stay of Agency Action moot. Moreover, this action lists Secretary Pate as the Respondent. Secretary Pate was not a party, nor were all of the claims presented here at issue, in the Linn, Johnson, or Woodbury injunctions. Finally, this Court is well aware it does not have authority to dissolve injunctions ordered in other counties. However, as noted above, Respondent admitted at hearing the county auditors in Linn, Johnson, and Woodbury Counties may move to dissolve their respective injunctions. *Cf.* Iowa R. Civ. P. 1.1509. (A “party against whom a temporary injunction is issued without notice may, at any time, move the court where the action is pending to dissolve, vacate or modify it.”). Accordingly, the Court concludes the case is not moot because the precise issues as to the specific parties before it have not been adjudicated in any prior court proceeding. This motion does indeed present a justiciable controversy and does not involve issues which are nonexistent or merely academic.

Respondent also contends Petitioners do not have standing to challenge the Directive on grounds that it violates county auditors’ home rule authority because they are not county auditors themselves and have no home rule authority of their own. Clearly, the question of Petitioners’ standing – or lack thereof – deserves much more than the cursory treatment it has received by Respondent. *See Godfrey v. State*, 752 N.W.2d 413, 417-28 (Iowa 2008) (discussing the extensive and complex law with regard to standing and its exceptions). As previously noted, the various entities that unsuccessfully moved to intervene in this action based their motion on purported

legally protected interests that might be impaired or impeded by this action. Those interests were almost identical to the substantial rights that Petitioners now claim are prejudiced by Respondent's Directive. Standing and intervention involve similar recognized interests in the subject matter of the litigation. *Mausolf v. Babbitt*, 85 F.3d 1295, 1300 (8th Cir. 1996). Additionally, individuals have a "legal right[] and interest[]" in enforcing constitutional separation of powers limits, because such limits are necessary to "protect[] the liberty of all persons within a State" and the "violation of constitutional principle that allocates power within government" is a "discrete, judiciable injury." *Bond v. United States*, 564 U.S. 211, 220-24, 131 S. Ct. 2355, 2363-63 (2011) (holding that an individual can challenge a federal statute under the Tenth Amendment). Petitioners thus have standing to allege the Directive upsets the balance of power set out in the Home Rule Clause and thus affects Petitioners' liberty interests with regard to separation of powers.

As to the remainder of Respondent's arguments pertaining to the likelihood of Petitioners' success on the merits, there are clearly strong arguments, supported by authority, on both sides. Such clearly controverted facts and law militate in favor of the potential likelihood of Petitioners' success on the merits and thus in favor of the grant of a stay of agency action.

Turning to whether a stay of agency action will substantially harm Secretary Pate, Respondent contends only that the stay will substantially harm him because managing a general election in the midst of a global pandemic will be a "heavy lift" for Secretary Pate's office and that the instant litigation would "do little to ease that burden." However, at no point does Respondent assert that this litigation increases that burden. Respondent further asserts the Directive will ensure absentee ballot request forms are "uniform" and that it will "promote absentee ballot access and limit confusion for voters," but at no point does it offer any support for those assertions. As explained below, it is this Court's opinion that the Directive is more likely to accomplish just the

opposite – to limit absentee ballot access rather than to promote it and to increase voter confusion rather than to limit it.

With regard to whether the public’s interest weighs in favor of or against a stay, the Court would note preliminarily that Petitioners made it abundantly clear in their oral argument that all they seek to stay is enforcement of Section 2 of the Directive. Section 2 is the provision that requires county auditors to distribute only the blank official request form. The Court strongly disagrees with Respondent’s assertions that “[t]he [D]irective was designed to facilitate widespread absentee voting during the pandemic” and “that the best way to ensure a fair and uniform absentee ballot application process was to mail an absentee ballot request to all active registered voters on the blank official form and to permit the county auditors to do the same”, i.e. “[require] county auditors to distribute only the blank official request form. . . .” Considering the surrounding circumstances – the widespread fear of infection caused by the current global pandemic, exacerbation of those fears and other stressors for a significant portion of the electorate by the recent “derecho” storm, the inconsistent positions and actions taken by Respondent and the Legislative Council with respect to absentee voting, widespread uncertainty as to the ability of the United States Postal Service to effectively handle an increase in mail resulting from the increase in absentee voting, and the almost complete absence of any evidence supporting the purported concern that the increase in absentee voting would be accompanied by an increase in voter fraud – it completely escapes this Court how the fairness and uniformity of the absentee ballot application process could possibly be threatened by allowing county auditors to simply continue practices they had been following for some time. The Court also has great difficulty understanding how the fairness and uniformity of the absentee ballot application process would be promoted by Section 2 of the Directive. The Court concludes that any concern Respondent has about the

fairness and uniformity of the absentee ballot application process is far outweighed by the public's interest in maximizing voter participation in the upcoming general election and, in particular, doing so by making absentee voting as easy and widely available as possible. The subject provision of Secretary Pate's Directive would clearly work counter to that interest.

As set forth above, to his credit Secretary Pate originally strongly urged Iowans to vote absentee by mail in the June 2, 2020 primary elections because it was the safest way to vote in light of the global pandemic. He caused absentee ballot request forms to be mailed to every active voter in Iowa prior to the primary, resulting in record voter turnout. The seemingly contradictory limitations and restrictions reflected in Section 2 of Secretary Pate's Directive, with no apparent evidence of any fraud or other issues with the primary election process, represents a complete "about face" by Secretary Pate and is more than perplexing to this Court. Section 2 of the Directive appears to be, as is sometimes said, a solution in search of a problem.

In summary, the Court concludes that Petitioners have made a sufficient showing of the likelihood of their success on the merits; especially when considered in conjunction with the balance of harms. Those two factors, considered together, clearly favor Petitioners. The Court further concludes that imposition of a stay would not substantially harm Respondent. Finally, the Court concludes the public's interest in maximization of voter participation in a manner that also best protects voters' health and safety through access to absentee voting clearly favors Petitioners.

ORDER

Based upon the foregoing findings of fact and conclusions of law, the court **GRANTS** Petitioners' Motion for Emergency Stay of Agency Action and hereby 1) stays enforcement of Section 2 of the Directive and 2) orders Secretary of State Pate to inform all Iowa county auditors of the entry of said stay **as soon as possible and, in any event, within one (1) business day of the entry of this order and no later.**



State of Iowa Courts

Type: OTHER ORDER

Case Number CVCV060642
Case Title DSCC DCCC AND IDP V PAUL PATE

So Ordered

A handwritten signature in cursive script that reads 'Robert B. Hanson'. The signature is written in black ink and is positioned above a horizontal line.

**Robert B. Hanson, District Court Judge,
Fifth Judicial District of Iowa**