

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

LAURA BELIN, BLEEDING HEARTLAND
LLC, CLARK KAUFFMAN, IOWA
CAPITAL DISPATCH, RANDY EVANS,
AND IOWA FREEDOM OF INFORMATION
COUNCIL,

Plaintiffs,

v.

GOVERNOR KIM REYNOLDS, MICHAEL
BOAL, PAT GARRETT, ALEX MURPHY,
and OFFICE OF THE GOVERNOR OF THE
STATE OF IOWA,

Defendants.

Case No. CVCV062945

RESISTANCE TO MOTION TO DISMISS

COME NOW, Plaintiffs Laura Belin (“Belin”) Bleeding Heartland LLC (“Bleeding Heartland”), Clark Kauffman (“Kauffman”), Iowa Capital Dispatch, Randy Evans (Evans), and Iowa Freedom of Information Council (“FOIC”), by and through their attorneys, Leah Patton and Rita Bettis Austen of the American Civil Liberties Union of Iowa Foundation, files a Resistance to the Defendants’ Motion to Dismiss and in support thereof states as follows:

1. On December 16, 2021, the Plaintiffs filed the Petition for Declaratory and Injunctive Relief, and in the Alternative, Request for Order of Mandamus, alleging 45 counts of violation of Iowa’s Open Records law (Chapter 22). The Governor’s Office failed to provide the Plaintiffs, who are reporters and news organizations, with the open records they requested one-and-a-half years ago to four months ago. The Plaintiffs allege the Governor’s Office violated Chapter 22 by 1) failing to promptly and timely provide the records requested and 2) denying access to the open records altogether.

2. On January 27, 2022, the Defendants filed a Motion to Dismiss, arguing that since the records were provided in response to the lawsuit the case is moot, the lawsuit presents a nonjusticiable political question, the lawsuit is barred by the Governor's executive privilege, and the Plaintiffs are not entitled to injunctive or mandamus relief.
3. Regarding the Plaintiffs' unlawful withholding claims, the Defendants did not provide the Plaintiffs with all the records that they requested. The Defendants redacted and withheld several of the documents pursuant to Iowa Code section 22.7. The time to withhold documents under section 22.7 has long passed such that the Defendants cannot rely on this section to withhold the documents. Therefore, the case is not moot.
4. Regarding the Plaintiffs' unlawful delay claims, the Defendants have delayed months to years in providing the partial records request responses and only provided the records in response to the litigation, which occurred 18 days after the petition was filed. For this reason, the case is not moot.
5. In addition, even if the case were moot, the public interest and the voluntary cessation exceptions to the mootness doctrines apply. The Plaintiffs' claims present issues of public importance that are capable of repetition but would evade review. The Defendants also cannot automatically moot a case simply by ending the unlawful conduct, considering the Defendants could resume the unlawful conduct after the case is dismissed.
6. Moreover, this lawsuit does not present a nonjusticiable political question. The judicial branch is entrusted to apply and interpret Iowa Code Chapter 22, and in

resolving this case, the judicial branch would not be wading into a matter that is exclusively entrusted to the executive branch.

7. Furthermore, there is no provision in Iowa Code Chapter 22 granting the Governor immunity from suit. The Governor's invocation of executive privilege is also not relevant at this stage in the proceedings and is premature. It also only potentially applies to the Governor herself, not to the other Defendants in this case.
8. Finally, the Plaintiffs can seek injunctive and mandamus relief. As aggrieved parties, the Plaintiffs have standing to seek these forms of relief. The determination of whether these remedies are appropriate in this case should not be decided at the motion to dismiss stage and should be reserved until after the court has heard the evidence in this case.
9. The Plaintiffs contemporaneously file a brief in support of the resistance to the Defendants' motion to dismiss.

WHEREFORE, the Plaintiffs request that the motion to dismiss be denied and any other relief that is just and equitable.

Respectfully submitted,

/s/ Leah Patton

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ATTORNEYS FOR PLAINTIFFS

Proof of Service

The undersigned certifies that the foregoing instrument was served upon all parties of record via EDMS on February 7, 2022.

/s/ Leah Patton
Leah Patton