

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

**AMERICAN CIVIL LIBERTIES UNION
OF IOWA FOUNDATION, and LEAGUE
OF UNITED LATIN AMERICAN
CITIZENS OF IOWA,**

Petitioners,

vs.

**IOWA SECRETARY OF STATE MATT
SCHULTZ,**

Respondent.

CASE NO. CVCV009311

**RULING ON MOTION FOR REVIEW
ON THE MERITS OR, IN THE
ALTERNATIVE, TEMPORARY
INJUNCTIVE RELIEF and MOTION TO
STRIKE APPENDIX AND STATEMENT
OF UNDISPUTED FACTS**

INTRODUCTION

The Petitioners' Motion for Review on the Merits or, in the Alternative, for Temporary Injunctive Relief came before the Court for oral argument and submission on October 23, 2013. The Petitioners, American Civil Liberties Union of Iowa Foundation and League of United Latin American Citizens of Iowa, were represented by their counsel, Joseph Glazebrook, Dan L. Johnston, M. Laughlin McDonald, Randall Wilson, and Rita Bettis. The Respondent, Iowa Secretary of State Matt Schultz, was represented by his counsel, Meghan Gavin. After considering the arguments of all parties, the Court now enters the following ruling:

BACKGROUND FACTS AND PROCEDURAL HISTORY

On July 20, 2012, Respondent Iowa Secretary of State Matt Schultz (hereinafter "Schultz") filed two new emergency rules. 35 Iowa Admin. Bull. 235-37 (Aug. 8, 2012). Emergency Rule 721-21.100 created a procedure for persons to file complaints about violations of election laws. *Id.* at 236. Emergency Rule 721-28.5 created a procedure for the Secretary of State to identify and remove foreign nationals from the voter registration list. *Id.* at 236-37.

These emergency rules took immediate effect, bypassing the ordinary waiting period for notice and publication. *Id.* at 235.

Also on July 20, 2012, Schultz used ordinary rulemaking procedures to file similar rules regarding voter complaints and the voter registration list. *Id.* at 226. On February 1, 2013, Schultz filed to rescind the complaint procedure in Rule 721-21.100, and to amend the voter identification and removal procedure in Rule 721-28.5. *Id.* at 1380–82. Rescission of the emergency rules and adoption of the amended permanent Rule 721-28.5 took effect on March 27, 2013. *Id.*

The Petitioners filed their first Petition for Judicial Review on August 8, 2012, before rescission of the emergency rules. (1st Pet.). The Petitioners sought an injunction and a declaration the emergency rules are invalid. (1st Pet. ¶ 24). On September 13, this Court issued a temporary injunction and stayed implementation of the emergency rules. (Ruling & Order on Petitioner’s Mot. for Temp. Inj.).

On March 29, 2013, the Petitioners filed their Second Amended Petition for Judicial Review, which expanded their claims to include permanent Rule 721-28.5. (2d Pet.). The Petitioners argue Schultz (1) improperly promulgated emergency rules when no emergency existed, (2) exceeded his statutory authority by promulgating emergency and permanent rules affecting the voter registration list, and (3) violated the right to vote with the emergency and permanent rules. (2d Pet. ¶¶ 37–39).

On August 26, 2013, the Petitioners filed the Motion for Review on the Merits or, in the Alternative, Temporary Injunctive Relief. The Petitioners argue Schultz lacks the statutory authority to promulgate permanent Rule 721-28.5, and they seek summary judgment on the

issue. Alternatively, the Petitioners seek a temporary injunction to stay implementation of permanent Rule 721-28.5.

On September 5, 2013, Schultz filed a resistance to the Petitioners' motions. Schultz also filed a motion to strike the Petitioners' evidence. Schultz argues the evidence is inadmissible on judicial review of agency action.

ANALYSIS

I. Summary Judgment

The Petitioners seek summary judgment on Schultz's statutory authority to promulgate permanent Rule 721-28.5. The parties disagree over the procedural availability of summary judgment here. A court may issue summary judgment in judicial review of agency action when the case presents strictly legal questions. *See Iowa Med. Soc. v. Iowa Bd. of Nursing*, 831 N.W.2d 826, 839 (Iowa 2013) (citing *City of Sioux City v. GME, Ltd.*, 584 N.W.2d 322, 324–25 (Iowa 1998)). The Petitioners argue Schultz's authority to promulgate permanent Rule 721-28.5 presents strictly legal questions. Therefore, according to the Petitioners, this Court may decide the issue through summary judgment. *See id.*

While a determination of Schultz's statutory authority presents strictly legal questions, summary judgment is available in judicial review only when the facts of the case are not in dispute. *See GME*, 584 N.W.2d at 324. The Petitioners present multiple claims here, and discovery continues. While the facts regarding Schultz's statutory authority are undisputed, other facts of the case remain in dispute. Therefore summary judgment is not available. *See id.*

Furthermore, the Petitioners raised three issues in their petition: Whether Schultz has the statutory authority to promulgate the rules here, whether Schultz properly used emergency procedures, and whether Schultz violated the right to vote. Granting summary judgment on

Schultz's statutory authority would bifurcate rulings on the merits of the Petitioners' other issues. All parties stated at the hearing they did not want to bifurcate the issues.

Therefore, summary judgment is denied. In so ruling, this Court provides no opinion on the merits of the Petitioners' arguments.

II. Temporary Injunction

Having failed to show the availability of summary judgment, the Petitioners ask this Court to issue a temporary injunction staying implementation of permanent Rule 721-28.5. "A temporary injunction is a preventive remedy to maintain the status quo of the parties prior to final judgment and to protect the subject of the litigation." *Lewis Inv., 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 a temporary injunction rests largely in the sound discretion of the trial court, dependent upon the circumstances of the particular case." *Id.* (Citation omitted). A district court's ruling on a motion for stay under section 17A.19(5) is reviewed for an abuse of discretion. *Snap-On Tools Corp. v. Schadendorf*, 757 N.W.2d 339, 342 (Iowa 2008). The burden is on the movant to establish the appropriateness of a temporary injunction. *O.N. Equity Sales Co. v. Pals*, 509 F. Supp. 2d 761, 767 (N.D. Iowa 2007). However, it is also "often said the pleader will be accorded the advantage of every reasonable intendment, even to implications, regardless of technical objections or informalities." *Bd. of Ed. of Kimballton Indep. Sch. Dist. v. Bd. of Ed. of Audubon County*, 260 Iowa 840, 151 N.W.2d 465, 467 (1967). In considering a request for temporary injunction, the Court should "consider the 'circumstances confronting the parties and balance the harm that a temporary injunction may prevent against the harm that may result from its issuance.'" *Max 100 L.C. v. Iowa Realty Co.*, 621 N.W.2d 178, 181 (Iowa 2001) (citation omitted).

A Petitioner may ask the Court for a temporary injunction if the agency refuses to stay the action. IOWA CODE § 17A.19(5)(c). The parties agree the Petitioners did not submit—and Schultz did not refuse—an application to stay permanent Rule 721-28.5.¹ *See id.* Therefore, according to Schultz, the Petitioners failed to exhaust their administrative remedies in seeking a stay, and they cannot ask for an injunction for the first time on appeal. *See Berger v. Iowa Dep't of Transp.*, 679 N.W.2d 636, 640–41 (Iowa 2004) (“The failure to raise the issue before the agency waives this error on appeal.”).

However, a Petitioner also may ask the Court for a temporary injunction if an application to the agency for a stay “is an inadequate remedy.” *Id.* The Court notes the Administrative Code does not contain a procedure to request a stay of the Secretary’s rules. *See IOWA ADMIN. CODE r. 721* (2013). An aggrieved party generally only needs to exhaust the remedies provided by agency rules. *See Portz v. Iowa Bd. of Med. Exam'rs*, 563 N.W.2d 592, 593 (Iowa 1997). Because the rules do not provide a procedure to ask the Secretary to stay implementation of a rule, such an application “is an inadequate remedy.” *See IOWA CODE § 17A.19(5)(c)*. Therefore, the Petitioners need not submit an application to stay permanent Rule 721-28.5 before this Court order a temporary injunction. *See id.*

Furthermore, even if applying to the Secretary for a stay were an adequate remedy, a Petitioner may skip administrative remedies when irreparable harm will result. *Salsbury Labs. v. Iowa Dep't of Env'tl. Quality*, 276 N.W.2d 830, 837 (Iowa 1979). This Court previously found the Petitioners demonstrated a sufficient likelihood the emergency rules would chill the right to vote and cause irreparable harm. (Ruling & Order on Petitioner’s Mot. for Temp. Inj. at 8–9). The emergency and permanent versions of Rule 721-28.5 contain similar procedures to identify

¹ While the Petitioners applied to Schultz to stay the emergency rules, they admit they did not also apply to stay permanent Rule 721-28.5.

and remove voters, and both rules present a likelihood of irreparable harm. Therefore, even if asking Schultz for a stay is an adequate remedy, the Petitioners have shown a sufficient likelihood irreparable harm will result and this Court may consider a temporary injunction. *See* IOWA CODE § 17A.19(5)(c).

To determine whether a stay or other temporary remedies should be entered pursuant to 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.

Id. The Petitioners bear the burden to present evidence establishing the prerequisites for the temporary injunction. *Snap-On Tools*, 757 N.W.2d at 342.

This Court previously stayed implementation of the emergency rules, finding the Petitioners will suffer irreparable injury if the temporary injunction is not granted, other parties will not be harmed by the temporary injunction, and the public interest supports the temporary injunction. (Ruling & Order on Petitioner's Mot. for Temp. Inj. at 8–11). While Schultz amended the permanent version of Rule 721-28.5, the permanent and emergency versions follow the same basic procedure to identify and remove registered voters. Therefore, permanent Rule 721-28.5 presents many of the same issues as its emergency counterpart, and, for reasons previously explained, the second, third, and fourth factors favor granting the temporary injunction. *See* IOWA CODE § 17A.19(5)(c)(2)–(4).

The other factor is the likelihood the Petitioners will prevail on the merits. *See id.* § 17A.19(5)(c)(1). The Petitioners offer novel questions about Schultz's statutory authority to

independently promulgate rules identifying and removing voters. *See id.* §§ 47, 48A. The statutes and case law do not present clear answers to the Petitioners' arguments. *See id.* Therefore, the Petitioners have demonstrated a sufficient likelihood they will eventually prevail on the merits. *See id.* § 17A.19(5)(c)(1).

Because the four factors favor temporary injunction, the Petitioner's motion to stay implementation of permanent Rule 721-28.5 is granted. *See id.* § 17A.19(5). The Court emphasizes this order is not a determination on the merits of the Petitioners' claims. The Court will address these issues at a later date.

III. Additional Evidence

The Petitioners have offered evidence to this Court for purposes of judicial review, including an appendix and a Statement of Undisputed Facts. Schultz argues this evidence was not before him when he promulgated the rules, and a reviewing court cannot hear additional evidence. While additional evidence has a limited role in judicial review of agency action, the Iowa Code clearly authorizes a reviewing court to "hear and consider such evidence as it deems appropriate." *Id.* § 17A.19(7). Because this Court may hear and consider additional evidence on judicial review, Schultz's motion to strike the Petitioners' evidence is denied. *See id.*

ORDER

IT IS THEREFORE THE ORDER OF THIS COURT that the Petitioners' Motion for Summary Judgment is DENIED.

IT IS FURTHER ORDERED that the Petitioners' Motion for Temporary Injunction of permanent Rule 721-28.5 is GRANTED.

IT IS FURTHER ORDERED that the Respondent's Motion to Strike Appendix and Statement of Undisputed Facts is DENIED.



State of Iowa Courts

Type: OTHER ORDER

Case Number CVCV009311
Case Title AMERICAN CIVIL LIB UNION ETAL VS MATT SCHULTZ, IA
SECR OF ST

So Ordered

A handwritten signature in cursive script that reads "Scott D. Rosenberg". The signature is written in black ink and is positioned above a horizontal line.

Scott D. Rosenberg, District Court Judge,
Fifth Judicial District of Iowa