

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

AMERICAN CIVIL LIBERTIES)	Case No: CVCV009311
UNION, and LEAGUE OF UNITED)	
LATIN AMERICAN CITIZENS OF)	
IOWA,)	
)	
Petitioners,)	
)	
v.)	RULING AND ORDER ON
)	
IOWA SECRETARY OF STATE)	MOTION TO
MATT SCHULTZ,)	
Respondent.)	INTERVENE AS DEFENDANTS

This matter came before the Court on September 6, 2012, on a Motion to Intervene as Defendants. The Applicants/Intervenors (hereinafter Applicants) were represented by Ryan Koopmans. The Petitioners were represented by attorney, Joseph Glazebrook. The Respondent was represented by Deputy Attorney General, Jeffrey Thompson. The Court, having considered the motion and the parties’ arguments, enters the following ruling and order.

BACKGROUND FACTS

The underlying issue in this case centers around the validity of the Secretary of State’s (hereinafter “the Secretary”) July 20, 2012, adoption of two new administrative rules pursuant to the emergency rulemaking power as set out in Iowa Code Sections 47.1, 17A.4(3) and 17A.5(b) (2011). The two new administrative rules amended Chapter 21, “Election Forms and Instructions” and Chapter 28 “Voter Registration File (I-Voters) Management”.

The first new rule, the Voter Complaint Rule, is codified at Iowa Administrative Code rule 721—21.100 and allows any person “to file a complaint concerning an alleged violation of any provision of Iowa Code chapters 39 through 53 [relating to elections].” Such complaints must be made on a form provided by the Secretary and signed by the complainant. *Id.* the

Secretary is then required to forward the complaints to the appropriate governmental agency for investigation. *Id.*

The second new rule, the Noncitizen Registered Voter Identification Rule, is codified at Iowa Administrative Code rule 721—28.5. This rule establishes a process by which the Secretary may verify the citizenship of individuals registered to vote in Iowa. In order to perform a verification under the Citizenship Verification Rule, the Secretary must (a) compare Iowa voter registration records against a list of foreign nationals residing in Iowa, (b) confirm whether any given voter's registration information is "an exact match" to an individual listed in the index of foreign nationals living in Iowa, (c) determine whether any individuals with "an exact match" have recently been naturalized, (d) provide notice to unnaturalized individuals of the possibility of removal from the voter rolls due to an apparent lack of citizenship, (e) provide an opportunity for the individuals to respond within fourteen days, and finally (f) remove unresponding individuals from the voter rolls. Iowa Admin. Code § 721—28.5. If a citizen is removed from the voter rolls, he or she may request an evidentiary hearing before the Iowa Voter Registration Commission pursuant to Iowa Admin. Code. § 821—1.5 to 1.6, and/or re-register to vote at the polls on Election Day pursuant to Iowa Code § 48A.7A.

On August 8, 2012, the American Civil Liberties Union and League of United Latin American Citizens of Iowa (hereinafter Petitioners) filed a Petition for Judicial Review of Agency Action under Iowa Code Section 17A. The Petitioners seek a declaratory judgment that the two new rules are invalid and they seek an order enjoining the Secretary of State from using and/or implementing either of the new rules. The Petitioners seek this relief on the grounds that: (1) the adoption of the rules pursuant to the emergency rulemaking powers was invalid (2) the Secretary of State exceeded his statutory authority in adopting the new rules; and (3) the rules are

vague and pose a substantial risk of erroneously depriving qualified voters in Iowa of their fundamental right to vote.

On August 22, 2012 three registered Iowa Voters (hereinafter Applicants) filed a Motion to Intervene claiming they are entitled to intervention as a matter of right or, in the alternative, permissive intervention pursuant to I.R.Civ.P. 1.407(1) and (2) respectively. The Petitioners resist intervention.

ANALYSIS

I. INTERVENTION OF RIGHT

1.407(1) *Intervention of right.* Upon timely application, anyone shall be permitted to intervene in an action under any of the following circumstances:

b. When the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

IA R 1.407

An applicant seeking intervention of right must meet the four prongs of the rule by showing: (1) the application was timely; (2) the applicant has an interest in the subject matter of the action; (3) the applicant's ability to protect that interest may be impaired or impeded by the disposition of the action, and; (4) the applicant's interest is not adequately represented by the existing parties. The Court will address each of these issues separately.

A. Timeliness

The first requirement an applicant must meet for purposes of intervention is one of timeliness. Neither party disputes the application for intervention was filed within the required timelines. The Court finds the application was timely.

B. Interest In The Subject Matter Of The Action

The Iowa Supreme Court has said that “[o]ne is 'interested' under [Rule 1.407] if one has a legal right that the proceeding will directly affect.” *In Interest of A.G.*, 558 N.W.2d 400, 403 (Iowa 1997) citing *In re B.B.M.*, 514 N.W.2d 425, 427 (Iowa 1994). Thus, in assessing a claim of right to intervene, courts must examine the source of the claimed right. *Id.* An indirect, speculative, or remote interest will not provide one a right to intervene. *Id.*; see 59 Am.Jur.2d *Parties* § 134, at 591–92 (1987) (to have an interest in an action, a person must assert more than a mere general interest in the subject matter of the litigation); 67A C.J.S. *Parties* § 75, at 815 (1978) (same). *In re H.N.B.*, 619 N.W.2d 340, 343 (Iowa 2000)

Applicants claim they have an interest in exercising their right to challenge ineligible persons’ voter registration under the Rules and this interest is more than a *general interest in the subject matter* of the case because they will actually vote in the November 2012 elections. Thus, as interested voters they are concerned the potential illegal participation of non-citizens would dilute their vote. In support of this argument the Applicants cite *Crawford v. Marion Cnty. Election Bd.*, 553 U.S. 181, 195 (2008).

The Crawford case centered around the constitutionality of an Indiana statute requiring citizens voting in person on election day, or casting a ballot in person at the office of the circuit court clerk prior to election day, to present photo identification issued by the government. *Id.* 185 One of the arguments put forth in support of the Indiana Statute was that the statute was justified to prevent voter fraud.

There is no question about the legitimacy or importance of the State's interest in counting only the votes of eligible voters. Moreover, the interest in orderly administration and accurate recordkeeping provides a sufficient justification for carefully identifying all voters participating in the election process. While the most effective method of preventing election fraud may well be debatable, the propriety of doing so is perfectly clear.

Crawford v. Marion County Election Bd., 553 U.S. 181, 196, 128 S. Ct. 1610, 1619, 170 L. Ed. 2d 574 (2008).

Though the *Crawford* case may support the applicants' position on the merits of the current case, it does not speak to their claimed right of intervention. The applicants, in the court's view, have only the same generalized desire and interest that all voters have in the election process proceeding with integrity and legitimacy. This is not, in the Court's judgment, a specific legal interest that merits intervention as of right.

Therefore, this Court finds the Applicants' ability to protect their interests in the subject matter of this action will not be impeded by a denial of intervention in this action.

C. Interest May Be Impeded or Impaired

Applicants next argue their ability to protect their interest may be compromised by the disposition of this action. They claim if the emergency voter rules promulgated by the Secretary of State are enjoined in this action they will be unable to file challenges to the voters' registration under the Complaint Rule. The Court finds this argument a bit disingenuous based on the fact that the intervenors have the means by which to challenge a voters' registration pursuant to Iowa Code Section 48A.14 which states in part:

1. The registration of a registered voter may be challenged by another registered voter of the same county subject to the conditions and limitations of this section. A challenge shall be a statement in writing to the commissioner alleging one or more of the following reasons the challenged registrant's registration should not have been accepted or should be canceled:
 - a. The challenged registrant is not a citizen of the United States.

Iowa Code Ann. § 48A.14 (West)

The Court finds the applicants interests will not be compromised by the outcome of this action as there are current remedies available to them through Iowa Voter Registration Act as set out in Iowa Code Section 48A.

D. Interests Would Be Adequately Represented

Applicants next argue they should be allowed to intervene because the Secretary of State may inadequately represent their interests. “The applicant bears the burden of showing that the existing parties will not adequately represent the prospective intervenors' interest, but this burden is minimal.” *San Juan County, Utah*, 420 F.3d at 1211 (citation omitted). *Varnum v. Brien*, 763 N.W.2d 862 (Iowa 2009)

The applicants claim this minimal burden is met because the Secretary is only interested in maintaining the “voter rolls”. Further, they claim, the Secretary does not have an interest in having the ability to report specific non citizens through the complaint process under the Rules.

This appears to be contrary to all of the applicants and Respondents arguments regarding the necessity of these rules the Applicants claim the rules are necessary for the Secretary to insure a fair reporting process and to maintain the integrity of the vote in Iowa. The Secretary claims the rules are necessary to insure voter fraud will not occur in the upcoming election. This is the same argument being made by the applicants and as such the Court finds the interests of the applicants are the same as the Secretary and as such are adequately represented.

II. PERMISSIVE INTERVENTION

1.407(2) Permissive intervention. Upon timely application, anyone may be permitted to intervene in an action under any of the following circumstances:

b. When an applicant's claim or defense and the main action have a question of law or fact in common.

IA R 1.407

Rule 1.407(2) requires that “the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the parties.” The judicial process cannot be a mere “vehicle for the vindication of the value interests of concerned bystanders.” *Alons*, 698 N.W.2d at 868 (citing *Valley Forge Christian Coll. v. Ams. United for Separation of Church & State, Inc.*, 454 U.S. 464, 473 (1982)). The Iowa Supreme Court has also stated that “[t]he law does not permit mere intermeddlers to resort to the courts where no real reason exists and no rights are affected.” *Bowers v. Bailey*, 237 Iowa 295, 300-01, 21 N.W.2d 773, 776 (Iowa 1946) *Varnum v. Brien*, 763 N.W.2d 862 (Iowa 2009)

Applicants claim they share several questions of fact with the Secretary. Specifically, they claim they share an interest in the adoption of the rules and the circumstances surrounding the emergency procedures implemented in the adoption of the rules. Additionally they claim they share a common question of law with the Secretary, specifically that the Secretary complied with the statutory requirements necessary for the adoption of the rules and that the Secretary did not exceed his statutory authority in promulgating the rules. Applicants argue because they have these questions of law and fact in common they should be allowed permissive intervention.

One of the issues the Court must consider is whether allowing intervention would unduly delay the adjudication of the case. This is a particularly important factor in that the election is a mere month and a half away. Evidencing the urgency of the matter is the fact the parties requested expedited hearings so as to resolve these important issues prior to the November 2012 election. The Court finds allowing the applicants to intervene permissively would unnecessarily delay the adjudication of these issues. The issues presented by the applicants would be duplicative and redundant to those presented by the respondents. This would consume the Court’s time unnecessarily in a matter where time is of the essence.

The Applicants motion to intervene permissively is denied.

III. AMICUS CURIAE STATUS

Because the Court has denied Applicants request to intervene it must next consider Applicants request to file a brief as Amicus Curiae. This request appears infrequently at the trial court level and the rules pertaining to Amicus Curiae briefs is contained in Iowa Rules of Appellate Procedure 6.906 which states in relevant part:

6.906(4) *Criteria for allowing amicus curiae brief.* An appellate court has broad discretion in determining whether an amicus curiae brief should be allowed. The court will base its decision on whether the brief will assist the court in resolving the issues preserved for appellate review in the case. In reaching its decision, the court will consider various factors, including those set forth below.

a. The court will ordinarily grant a motion for leave to file an amicus curiae brief if one of the following factors is present.

(1) The party whose position the proposed amicus brief supports is unrepresented or has not received adequate representation.

(2) The proposed amicus curiae has a direct interest in another case that may be materially affected by the outcome of the present case.

(3) The proposed amicus curiae has a unique perspective or information that will assist the court in assessing the ramifications of any decision rendered in the present case.

b. The court will ordinarily deny a motion for leave to file an amicus curiae brief if one of the following factors is present.

(1) The proposed amicus curiae brief will merely reiterate the arguments of the party whose position the brief supports.

(2) The proposed amicus curiae brief appears to be an attempt to expand the number of briefing pages available to the party whose position the brief supports.

(3) The proposed amicus curiae brief attempts to raise issues that were not preserved for appellate review.

(4) The proposed amicus curiae brief will place an undue burden on the opposing party.

c. The court may also strike an amicus curiae brief filed with the consent of all parties if it appears the brief would not be allowed under the above criteria.

As a general rule, allowance of the appearance of a person as amicus curiae and submission of briefs by same is discretionary with the Court. 4 Am. Jur.2d *Amicus Curiae* § (2007). *Varnum v. Brien*, 763 N.W.2d 862 (Iowa 2009)

When reviewing the criterion set forth in the rule the Court notes the desire to avoid duplication and redundancy in briefing of issues. Specifically the Court notes the Court will deny an amicus brief if the proposed brief will merely reiterate the arguments of the party whose position the brief supports. IA R 6.906(b)(1).

The Court will allow an amicus Curiae brief if a party or position is not adequately represented. IA R. 6.906(a)(1). This Court has already found the Applicants position is adequately represented by the Respondents in this matter which was one of the reasons the Court denied Applicant's Motion to Intervene. The same analysis applies to the request to file an Amicus Curiae brief.

Additionally, the Court had an opportunity to read and review all of the briefs in this matter. The Court noted striking similarities in the briefs provided by the Respondents and the Applicants on both the Request for Temporary Injunction and the Motion to Dismiss. The Court did not find where the Applicants provided a new or unique perspective to these issues that would assist the Court in assessing the ramifications of the Court's decision.

The Court denies Applicants request to file amicus curiae briefs in that it would simply reiterate those arguments made by the Respondents and would not provide a unique perspective that would assist the Court.

IT IS THE ORDER OF THE COURT that Applicants' motion to intervene and request to participate Amicus Curiae are **DENIED**.

IT IS SO ORDERED this _____ day of _____, 2012.



Mary Pat Gunderson, DISTRICT JUDGE
Fifth Judicial District of Iowa

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