

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

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

Petitioners,)

v.)

**IOWA SECRETARY OF STATE)
MATT SCHULTZ,)
Respondent.)**

Case No: CVCV009311

**RULING AND ORDER ON
RESPONDENT'S
MOTION TO DISMISS**

This matter came before this Court on September 6, 2012, on Respondent's Motion to Dismiss. The Respondent was represented by Deputy Attorney General, Jeffrey Thompson. The Petitioners were represented by attorney, Joseph Glazebrook. The Respondent argues in his Motion to Dismiss that the Court lacks jurisdiction to decide the merits of this case because the Plaintiffs lack standing to bring this action. The Court has reviewed the pleadings and heard the arguments made by the attorneys and enters the following ruling and order.

BACKGROUND FACTS

The underlying issue in this case centers around the validity of the Secretary of State's action on July 20, 2012, in adopting 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 of those rules, 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 signed, and provided on a form made available by the Secretary. *Id.* After receiving such complaints, the Secretary is required by the Complaint Rule to forward the complaints to the appropriate governmental agency for investigation. *Id.*

The second, 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 are seeking declaratory and injunctive relief from this Court. Specifically, Petitioners are asking this Court to declare the two new rules adopted by the Secretary of State invalid and enjoin the Secretary of State from using and/or implementing either of the new rules. The Petitioners are seeking this relief from

the Court alleging the adoption of the new rules pursuant to the emergency rulemaking powers was invalid and the Secretary of State exceeded his statutory authority in adopting the new rules. Finally, Petitioners argue the rules are vague and pose a substantial risk of erroneously depriving qualified voters in Iowa of their fundamental right to vote.

On August 16, 2012, the Respondent filed a Motion to Dismiss alleging the Petitioners lack standing to bring this action before the Court.

STANDARD OF REVIEW

A motion to dismiss is sustainable only when it appears to a certainty that a Plaintiff would not be entitled to relief under any state of facts that could be proved in support of the claims asserted. *Haupt v. Miller*, 514 N.W.2d 905, 907 (Iowa 1994). In a motion to dismiss, the movant “admits the well-pleaded facts in the pleading assailed for the purpose of testing their legal sufficiency.” *Id.*

In a motion to dismiss, “[t]he petition is assessed in the light most favorable to the plaintiffs, and all doubts and ambiguities are resolved in plaintiffs favor.” *Robbins v. Heritage Acres*, 578 N.W.2d 262, 264 (Iowa Ct. App. 1998) (citation omitted). “A motion to dismiss must stand or fall on the exclusive contents of the petition and cannot rely on acts not alleged in the petition or facts presented at an evidentiary hearing.” *Id.* (citation omitted). At issue “is [p]laintiffs' right of access to the district court, not the merit of [their] allegations.” *Magers-Fionof v. State*, 555 N.W.2d 672, 674 (Iowa 1996).

ANALYSIS AND RULING

Petitioners assert they have both traditional and third party standing, and even if they do not have standing under these rules that the residual exception to standing when there is an issue of great public interest should apply in this case.

Standing in Iowa is prudential, not jurisdictional, thus the Iowa Supreme Court has recognized that standing can be waived to “resolve certain questions of great public importance and interest in our system of government.” *Godfrey v. State*, 752 N.W.2d 413, 425 (Iowa 2008).

Moreover, our doctrine of self-imposed restraint was not created to keep us from deciding critical public issues of the day, but was built upon a foundation of prudential policies to promote the effective operation of our courts and to define the proper role of the courts within our democratic society. Thus, an exception to standing that conforms to the underlying rationale for the doctrine should be recognized.

Id. However, in order to prevent standing from transforming “into a loose doctrine” our supreme court determined a “principled approach” to the application of this exception is required. *Id.* Such application would take into account the two “policies that drive the standing rule.” *Id.*

With regard to the first policy driving the standing rule, the court noted,

In a broad sense, standing is deeply rooted in the separation-of-powers doctrine and the concept that the branch of government with the ultimate responsibility to decide the constitutionality of the actions of the other two branches of government should only exercise that power sparingly and in a manner that does not unnecessarily interfere with the policy and executory functions of the two other properly elected branches of government. *See Allen*, 468 U.S. at 750, 104 S. Ct. at 3324, 82 L. Ed. 2d at 569. While this policy of standing has no specific constitutional basis in Iowa, as it does in federal law, it is compatible with the overall constitutional framework in this state and properly reflects our role in relationship to the other two coequal branches of government. This ultimate power to decide disputes between the other branches of government and to determine the constitutionality of the acts of the other branches of government does not exist as a form of judicial superiority, but is a delicate and essential judicial responsibility found at the heart of our superior form of government. We have the greatest respect for the other two branches of government and exercise our power with the greatest of caution.

Id. The second policy underlying standing exists to

ensure the litigants are true adversaries, which theoretically allows the case to be presented to the court in the most effective manner. Similarly, standing helps ensure that the people most concerned with an issue are in fact the litigants of the issue. Standing also ensures that a real, concrete case exists to enable the court to feel, sense, and properly weigh the actual consequences of its decision.

Id. (Citations omitted). Thus, “standing should be waived only when the issue is of utmost importance and the constitutional protections are most needed.” *Id.* at 427.

Although our supreme court has recognized the possibility of a “great public importance” exception to standing in Iowa, it has never expressly found an “issue of sufficient public import to apply the exception.” *George v. Schultz*, 810 N.W.2d 27, at *5 (Iowa Ct. App. Dec. 7, 2011) (unpublished); *but see Godfrey*, 752 N.W.2d at 429 (Wiggins and Hecht, JJ, dissenting) (stating it could be argued the court implicitly recognized the doctrine in *Rants v. Vilsack*, 684 N.W.2d 193, 198 (Iowa 2004)).

The court in *Godfrey* saw the *absence* of any allegations implicating “fraud, surprise, personal and private gain, or other such evils inconsistent with the democratic” process as diminishing the need to intervene in the activities of another branch of government. *Id.* at 427. However, in this case the Court finds the Petitioners *do* in fact make these types of allegations. They specifically allege the manner in which Secretary Schultz promulgated the challenged voting rules, in secret and on an emergency basis, amounted to surprise to legislators, county auditors, and all Iowans alike. Thus, here Petitioners *are* in effect alleging a “perpetration of fraud or deceit” on the public by the Secretary that is “inconsistent with the democratic process.” *See id.* Petitioners contend this manner of rulemaking seriously undermined the democratic process and poses a substantial risk of infringing upon the fundamental constitutional right to vote of qualified voters. Therefore, the very example given in *Godfrey* of when waiving standing to allow the court to examine the acts of another branch of government would be appropriate is present in this case.

Accordingly, the Court concludes this is precisely the type of situation the exception to the standing rule was intended to address and which requires the Court to intervene in the affairs

of another branch of government. Here, unlike in *Godfrey*, there are allegations that implicate surprise, secrecy, fraud, and deceit. Because it involves the right to vote it is a situation “of utmost importance” where “constitutional protections are most needed.” *Id.* Based on the specific facts and circumstances surrounding this case, namely the procedural time constraints due to the impending November elections, the Court believes if it does waive the standing requirements to allow the Court to address the merits of the Petitioners’ complaints there is a strong likelihood the emergency rules at issue would go unreviewed prior to the upcoming elections and failure to do so could affect citizens’ fundamental right to vote. Thus, also unlike in *Godfrey*, here in the “broad scheme of constitutional violations, the constitutional issue presented in this case” is *one of great public importance* so as to support the waiver of our standing rule. *See id.* at 428. The procedural and substantive challenges asserted here present legitimate concerns of great public that on balance *do* trump the interests sought to be protected by our doctrine of standing. *See id.*

Assessing the Petition in the light most favorable to the Petitioner and resolving all doubts and ambiguities in their favor, and for the all the reasons set forth above, the Court concludes the Petitioners have shown the issues presented here are of such great public importance and interest to our system of government such that waiver of our standing rules is justified. Because the Court has concluded this exception to the standing requirements has been met it need not determine whether standing would be appropriate under any of the other grounds asserted or addressed by the parties.

IT IS THE ORDER OF THE COURT that the Respondent’s Motion to Dismiss is **DENIED.**

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

Mary Pat Gunderson, DISTRICT JUDGE
Fifth Judicial District of Iowa

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