

IN THE DISTRICT COURT OF THE STATE OF IOWA IN AND 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
SHULTZ,**

Respondent.

Case No. CVCV009311

**SECOND AMENDED PETITION FOR
JUDICIAL REVIEW
OF AGENCY ACTION UNDER
IOWA CODE §17A**

COME NOW Petitioners, American Civil Liberties Union of Iowa Foundation and the League of United Latin American Citizens of Iowa, and by and through their undersigned Attorneys, state the following for their Petition for Judicial Review of Agency Action:

NATURE OF ACTION

This action seeks declaratory and injunctive relief against Secretary of State Matt Shultz from violating Iowa Code §§ 47.1 and 17A.1 and acting outside the scope of his statutory authority with respect to his promulgation and enforcement of IAC § 721-28.5, an administrative rule that would allow the Secretary to remove from the list of registered voters the names of any individuals suspected of being non-citizens. Pursuant to Iowa Code §§ 48A.28 and 48A.30, only the Iowa legislature has the power

to determine the basis and process for removing voters from the voter rolls, not the Secretary of State.

This lawsuit also seeks to enjoin the enforcement of ICA § 721-28.5 on the grounds that the methods by which the Secretary of State intends to confirm a voter's citizenship and remove suspected ineligible voters will result in the removal of eligible voters. Section 721.28.5 does not provide adequate notice to voters regarding the process by which they may challenge the removal. Moreover, there is no legitimate state interest that justifies the burden IAC § 721.28.5 places on eligible voters given the lack of evidence showing that widespread voting by non-citizens is occurring in Iowa.

This action further continues to challenge Respondent's use of emergency rule-making to adopt IAC §721-21.100 (39A, 47) and IAC § 721-28.5 (47, 48A)

Petitioners are organizations that work to protect the rights of eligible voters in Iowa. Petitioner League of United Latin American Citizens also actively engages in voter education and voter registration activities in the State, primarily in Latino and Hispanic communities. Petitioners are concerned that many of their members will be adversely affected by the law which, in turn, will impact the effectiveness of Petitioners' work in the area of voting rights and voter participation. Petitioners have no plain, speedy, or adequate remedy at law other than the relief requested in this Complaint. Unless enjoined by this Court, Respondent will continue to illegally enforce the new voter removal procedures against registered voters in Iowa.

PARTIES, JURISDICTION, AND VENUE

1. Petitioner, American Civil Liberties Union of Iowa Foundation (hereinafter “ACLU of Iowa” or “ACLU”) is a nonprofit corporation formed pursuant to Iowa Code § 504.
2. The ACLU of Iowa is headquartered in Des Moines, Polk County, Iowa, and its primary place of operation is throughout the state of Iowa.
3. Petitioner, League of United Latin American Citizens of Iowa (hereinafter “LULAC” or “LULAC of Iowa”) is a nonprofit corporation formed pursuant to Iowa Code § 504.
4. LULAC of Iowa is headquartered in Des Moines, Polk County, Iowa, and its primary place of operation is throughout the state of Iowa.
5. Respondent, Iowa Secretary of State Matt Shultz, is the primary executive department official in the state of Iowa in charge of overseeing and implementing election processes, as provided for by law.
6. The Iowa Secretary of State’s primary office is in Des Moines, Polk County, Iowa.
7. Iowa’s Courts have personal jurisdiction over all parties in this matter.
8. Iowa’s Courts have subject matter jurisdiction over this matter.
9. Under Iowa Code §17A.19, jurisdiction in the Polk County District Court is proper.
10. Under Iowa Code § 17A.19(2), venue in the Polk County District Court is proper by the plain language of the statute and because Petitioners are headquartered in Polk County, Iowa.¹

¹ “Proceedings for judicial review shall be instituted by filing a petition either in Polk County district court or in the district court for the county in which the petitioner resides...” Iowa Code §17A.19(2) (2011).

11. Petitioners have standing to bring this action, and this matter is of great public importance.
12. The Court previously issued an order in this matter on January 16, 2013, staying further proceedings until the normal rule-making process for the rules in question could be completed and allowing Petitioners to amend their petition at that time to include the final adopted rule or rules. That process is now complete, and Petitioners now submit this amended petition challenging the originally adopted emergency rules as well as the final rule adopted through normal administrative rule-making procedures that supplants them.
13. Petitioners have not yet requested any injunctive relief regarding the amended version of the Voter Removal Rule adopted through normal rule-making procedures in this matter. *See* Iowa R. Civ. P. 1.1504.

NATURE OF AGENCY ACTION

14. The State of Iowa requires that, in order to vote in any election conducted in the state, an individual must be a citizen of the United States of America. *See* ICA § 48A.5.
15. The Iowa voter registration form requires an applicant to swear or affirm that he or she satisfies the citizenship requirement for purposes of voting and provides the following warning: "If you sign this form and you know it is not true, you can be convicted of perjury and fined up to \$7,500 and/or jailed for up to 5 years."

16. The county commissioners must conduct uniform, non-discriminatory registration list maintenance and ensure the maintenance of accurate and current voter registration records. ICA §§ 48A.26, 48A.30.
17. Upon information and belief, the State of Iowa has never attempted to update the records of the Department of Transportation to reflect individuals who have become naturalized United States citizens after obtaining an Iowa drivers' license.
18. On or around July 20, 2012, Respondent promulgated two new administrative rules, IAC §721-21.100 (39A,47) and IAC §721—28.5 (47, 48A) (See Addendum 1, attached). These rules were published in the Iowa Administrative Bulletin on or about August 8, 2012.
19. The first rule, IAC §721-21.100 (39A,47) (hereinafter "Voting Law Complaint Rule") created a mechanism by which any person could file a complaint alleging the invalidity of an Iowan's right to vote or other alleged violations of Iowa Code §39-53. The complaining person could be anyone, including those lacking a connection to the State. Further, in direct contradiction of Iowa Code § 48A.14(1), these complaints need not have been sworn, or otherwise verified, by the complaining person and would have automatically resulted in the forwarding of the complaint to an appropriate agency for further investigation "as deemed necessary."
20. The second rule, IAC §721—28.5 (47, 48A) (hereinafter "First Voter Removal Rule") required the Secretary of State to "periodically" obtain lists of foreign nationals from unspecified state and federal agencies and attempt to match

those names to voter registration records using unspecified “predetermined search criteria.” In the event of apparent matches, the Secretary of State would send notice to the individual that she or he would face removal from the voting rolls and require the person to essentially provide documentation disproving the assertion within a fourteen day period in order to remain eligible to vote.

21. Initially, these rules became effective immediately pursuant to emergency rule-making, which Respondent claimed was authorized under Iowa Code § 47.1, §17A.4(3) and §17A.5(b). (See Addendum 1).
22. At the same time, Respondent initiated normal rule-making with respect to each of these rules so that they would be subsequently adopted through normal rule-making procedures as well. The normal rule-making procedure requires greater time for public notice, input, and debate. IAC § 17A.4.
23. The stated reason for the rules in question was to “establish a formal procedure for investigating and resolving complaints received by the Secretary of State...” relating to voting and elections. (See Addendum 1).
24. With regard to the emergency process used to enact the rules, Respondent indicated that the normal rule-making process was not necessary under Iowa Code §17A.4(1) because, pursuant to Iowa Code §17A.4(3) and §17A.5(b), the normal rule-making procedure would take too long and delay the implementation of the new procedures prior to the upcoming November 6, 2012 election. (see Addendum 1).
25. Upon information and belief, Respondent began to produce lists of registered voters in Iowa that he classified as suspected non-citizens.

26. The emergency rules were enjoined on or about September 13, 2012 by the Polk County District Court because their adoption likely exceeded the emergency rule-making power of the Respondent and would cause immediate harm should they be allowed to remain in effect.
27. Upon information and belief, prior to and following the Court's injunction, Respondent used funds issued to the State under the Help America Vote Act to hire a law enforcement officer to conduct criminal investigations of Iowans suspected of being non-citizens.
28. Notwithstanding the Court's injunction against the emergency rules, the normal rule-making procedure proceeded. Petitioners, joined by numerous statewide organizations and members of the public, offered written and oral comments to Respondent objecting to specific aspects of the proposed final rule as well as to the Respondent's authority to promulgate the rule.
29. During the normal rule-making process, the Voter Removal Rule, rule IAC § 721-28.5 (47, 48A) was slightly modified, and the other rule, the Voting Law Complaint Rule, IAC § 721-21.100 (39A, 47), was voluntarily rescinded in its entirety. (See Addendum 2).
30. The final adopted version of the Voter Removal Rule was published in the Iowa Administrative Bulletin February 20, 2013 and is effective as of March 27, 2013. Both the emergency adoption of IAC § 721-28.5 and the adoption of the final current version of the rule violate Iowa Code §§ 47.1, 48A.28, 48A.30, 17A.1, and 17A.4 in that only the Iowa Legislature has the power to determine the basis for removing an already registered voter from the voter rolls. The Secretary of

State may not unilaterally include additional grounds for such removal as he has unlawfully done in this instance.

31. The final adopted version of IAC § 721-28.5 does not specify the state and federal agencies Respondent intends to rely upon as a basis for removing a registered voter. Therefore, there is no opportunity by which to determine the reliability and effectiveness of the method by which Respondent will remove voters.
32. The final adopted version of IAC § 721-28.5 does not provide voters with sufficient information regarding the process by which they may challenge the removal of their name from the voter rolls in violation of Iowa Const. Art. 1 § 9.
33. The Voter Removal Rule also increases the likelihood that an eligible voter will be improperly removed from the voter registration rolls and unlawfully denied the fundamental right to vote in violation of Iowa Const. Art. 1 §§ 1, 6.

PARTICULAR AGENCY ACTION APPEALED FROM

34. Petitioners appeal Respondent's final agency action adopting and promulgating IAC §721-21.100 (39A,47) and IAC §721—28.5 (47, 48A) by way of the emergency rule-making power contained in Iowa Code §17A.4(3) and Iowa Code §17A.5(b). (See Addendum 1).
35. Petitioners further appeal from Respondent's final agency action adopting and promulgating IAC §721-28.5 (47, 48A) by way of normal rule-making procedures, effective on or about March 27, 2013.

GROUND UPON WHICH RELIEF IS SOUGHT

36. Petitioners seek redress of the agency decision for three primary reasons:
37. First, the adoption of the new administrative rules pursuant to the emergency rule-making powers under Iowa Code §47.1, §17A.4(3) and Iowa Code §17A.5(b) was improper because no emergency existed which justified the rules in question.
38. Second, Respondent exceeded his statutory authority in adopting the rules in question, both in their emergency form and via the normal rule-making process. This is so because under Iowa Code §47.1(1) and §17A.1(3), Respondent is authorized only to promulgate rules that carry out provisions of the Iowa code. The Iowa legislature has specifically created the exclusive means of maintaining the voter registration lists. Iowa Code §§ 48A.28, 48A.30. Further, the proposed action is not within the authority of the Secretary of State. Rather, under Iowa Code §47.81, the bipartisan Voter Registration Commission is the agency vested with rulemaking pertaining to the maintenance of the voter registration rolls. Rules relating to voter registration must be "in accordance with the policies of the voter registration commission." Iowa Admin. r. 821—1.2 (47).
39. Third, the rules in their emergency and normal form are vague, and the adoption and enforcement of the rules pose a substantial risk of erroneously depriving qualified voters in Iowa their fundamental right to vote as described above. Respondent has neither provided nor required uniform statewide procedures to be applied by county commissioners in evaluating whether individuals who Respondent has identified as being suspected non-citizens are indeed United

States citizens. Respondent has not specified the types of documentation that an individual suspected of being a non-citizen may produce in order to prove citizenship. Upon information and belief, a disproportionate share of the individuals against whom Respondent has directed removal procedures to be instituted are naturalized citizens and racial and language minorities.

RELIEF SOUGHT

40. Petitioners respectfully request declaratory and injunctive relief as follows:
- a. An order declaring that IAC §721-21.100 (39A,47) and IAC §721—28.5 (47, 48A) are invalid for the reasons set forth herein.
 - b. Injunctive relief enjoining Respondent, his successors in office, agents, employees, attorneys and those persons acting in concert with him or at his direction from using and implementing the voter removal procedures, and ordering Respondent to employ his full authority to direct all county auditors to cease challenge procedures of Iowa voters identified pursuant to the Voter Removal Rule.
 - c. Injunctive relief enjoining Respondent, his successors in office, agents, employees, attorneys and those persons acting in concert with him or at his direction from using and implementing the Voting Law Complaint Rule
 - d. Injunctive relief ordering corrective measures be taken by Respondent, including but not limited to sending letters rescinding its previous correspondence to county auditors relating to the new voter removal

procedures and to report immediately to this court any county that refuses to comply;

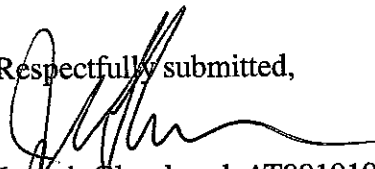
- e. An order of this Court retaining jurisdiction over this matter until Respondent has complied with all the orders and mandates of the court;
- f. The costs of this suit, including reasonable attorneys' fees authorized by law; and
- g. Such other and further relief as this Court may deem just and proper.

REQUEST FOR HEARING AND SCHEDULING CONFERENCE

41. Petitioners request a scheduling conference to set dates to govern discovery as well as a final disposition hearing and briefs related thereto.

WHEREFORE, Petitioners respectfully request this Honorable Court grant the relief requested herein and grant any other relief in the interest of justice.

Respectfully submitted,


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** Pro hac vice admission application pending.

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing instrument was served upon all parties in the above case to each of the attorneys of record herein at their respective addresses disclosed on the pleadings on the 29 day of March, 2013 by U.S. mail.



Joseph Glazebrook

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