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IN THE IOWA DISTRICT COURT FOR POLK COUNTY

LEAGUE OF UNITED LATIN AMERICAN CITIZENS OF IOWA; and TAYLOR BLAIR, **Plaintiffs,** **vs.** **IOWA SECRETARY OF STATE PAUL PATE,** **Defendant.**	**Case No. CVCV056403** **RULING ON PLAINTIFFS' MOTION FOR A TEMPORARY INJUNCTION**

On June 27, 2018, Plaintiffs League of United Latin American Citizens of Iowa and Taylor Blair (collectively "Plaintiffs") filed a Motion for a Temporary Injunction and Expedited Relief. On July 5, Defendant Iowa Secretary of State Paul Pate ("the State") filed a resistance to the Motion. On July 6, the Court held a contested hearing on the Motion for a Temporary Injunction. Attorneys Bruce Spiva, Brian Marshall, and Gary Dickey appeared on behalf of Plaintiffs. Solicitor General Jeffrey Thompson and Assistant Attorneys General Matthew Gannon and Thomas Ogden appeared on behalf of Defendant. Having considered the court file, filings of parties, and arguments of counsel, the court enters the following ruling.

I. FACTUAL AND PROCEDURAL BACKGROUND

In 2017, House File 516 ("HF 516") was passed by the Iowa legislature and signed into law by Governor Terry Branstad. HF 516 altered Iowa's election procedures. First, it altered the process for obtaining, submitting, and counting absentee ballots. The measure shortens the voting period for absentee ballots from forty (40) days preceding a general or primary election to twenty-nine (29) days. This change removes two weekends available to voters to cast an absentee ballot. Next, it requires that county auditors verify that the voter's signature on the

absentee ballot request and the absentee ballot return envelope matches the voter's signature on record. If a county auditor find that the signatures that do not match, the county auditor is to notify the voter. The voter is then eligible to request a new ballot or vote on election day. However, if the ballot was received after 5:00 PM on the Saturday preceding the election, the voter receives no notice of the ballot defect and their vote will not be counted. The voter will not have the ability to cure the alleged defect and cast a ballot. HF 516 also requires a voter to include his or her voter verification number, which is typically a driver's license number or a nonoperator's identification card number, on requests for absentee ballots. If a voter does not have a driver's license or other Iowa-issued identification card, the voter must use an identification number assigned to the voter by the Secretary of State.[1]

HF 516 also requires voters to present specified types of identification when voting in person, beginning in 2019. However, recent advertisements and publications created and published by the State have indicated that photo identification is required to vote in elections in 2018. The State refers to this as a "soft roll out" of the identification requirement.

On May 30, 2018, a Petition in Law and Equity and for Judicial Review of Agency Action was filed. A Motion to Dismiss was filed on June 11, 2018. In response, the Plaintiffs filed a Resistance to the Motion to Dismiss on June 21, 2018, arguing the appropriate remedy for misjoinder of claims is severance, not dismissal. Plaintiffs also filed a Motion to Sever requesting that Count V of the original Petition, the count asserting a Petition for Judicial Review, be considered in a separate case. On July 6, 2018, the Court denied the Defendant's Motion to Dismiss and granted Plaintiffs' Motion to Sever. The Clerk assigned case number

[1] Part of the Plaintiffs' original petition challenged an administrative rule adopted by the Secretary of State that related to the county auditor's ability to supplement missing information to voters' requests for absentee ballots. This claim has been severed and will be addressed in the ruling on Plaintiffs' petition for judicial review in the case now numbered CVCV056608.

CVCV056608 to the petition for judicial review that has been severed from this case. This Ruling therefore does not address Plaintiffs' Motion with respect to the regulation challenged by Count V of the original petition.

The remaining aspects of the Plaintiffs' Motion for a Temporary Injunction seek to enjoin particular provisions of House File 516 ("HF 516"), including (1) the provision that shortens the absentee voting period from 40 days to 29 days, (2) the provision that provides for the rejection of absentee ballot applications and returned absentee ballots based on county auditors determination that a voter's signature does not match the signature in the registration records, and (3) the provision requiring an absentee ballot application include a voter verification number. It also seeks to enjoin two actions of the Secretary of State in implementing the law: (1) language included on the absentee ballot application form stating that providing an identification number is required for an absentee ballot to be issued and (2) advertisements stating "[b]eginning in 2018, Iowa voters will be asked to show a form of valid identification when voting" and advertisements containing an image depicting "ID" as a step in the voting process. Plaintiffs argue that these actions mislead voters and creates a substantial risk of discouraging voter participation.

II. LEGAL STANDARD

There are three circumstances in which a court may grant a temporary injunction under Iowa Rule of Civil Procedure 1.1502: (1) when it "pertains to an act causing great or irreparable harm," (2) when it "pertains to a violation of a right tending to make the judgment ineffectual," or (3) when the court is statutorily authorized. *Max 100 L.C. v. Iowa Realty Co., Inc.*, 621 N.W.2d 178, 181 (Iowa 2001) (internal citations and quotations omitted). "Generally, the issuance of an injunction invokes the equitable powers of a court and courts apply equitable

principles." *Id.* To prove that they are entitled to a temporary injunction, Plaintiffs must show that (1) in the absence of the injunction they will suffer irreparable harm, (2) they are likely to succeed on the merits, and (3) injunctive relief is warranted considering the circumstances confronting the parties and "balance[ing] the harm that a temporary injunction may prevent against the harm that may result from its issuance." *Id.*

"[T]emporary injunctions require a showing of the *likelihood* of success on the merits whereas permanent injunctions require *actual* success." *PIC USA v. North Carolina Farm Partnership*, 672 N.W.2d 718, 723 (Iowa 2003) (citing *Max 100 L.C.*, 621 N.W.2d at 181) (emphasis in original). "Rules of evidence are applied more strictly on final hearing of a cause than on an application for temporary injunction, when evidence that would not be competent to support a perpetual injunction may properly be considered." *Id.* (quoting *Kleman v. Charles City Police Dep't*, 373 N.W.2d 90, 95 (Iowa 1985)). Ultimately, "the decision to issue or refuse 'a temporary injunction rests largely [within] the sound judgment of the trial court.'" *Max 100 L.C.*, 621 N.W.2d at 181.

III. ANALYSIS

Plaintiffs argue they will suffer irreparable damage if certain aspects of HF 516 and certain State actions are not enjoined, that they will likely succeed on the merits of their claims that the challenged provisions HF 516 and actions of the State violate the Iowa Constitution, and that, issuing an injunction is proper when balancing the potential harm to the parties. Plaintiffs pursue claims under the Iowa Constitution exclusively.

A. Irreparable Harm

Plaintiffs argue they will suffer irreparable harm if the certain challenged provisions of HF 516 are not enjoined prior to the general election in November of 2018. A harm is irreparable when there is

no other adequate remedy at law. *See In re Langholz*, 887 N.W.2d 770, 779 (Iowa 2016). Furthermore, "'[t]o succeed in demonstrating a threat of irreparable harm, a party must show that the harm is certain and great and of such imminence that there is a clear and present need for equitable relief.'" *Fort Des Moines Church of Christ v. Jackson*, 215 F.Supp.3d 776, 803 (S.D. Iowa 2016) (quoting *S.J.W. ex rel. Wilson v. Lee's Summit R–7 Sch. Dist.*, 696 F.3d 771, 778 (8th Cir. 2012)) (further quotations omitted). "A restriction on the fundamental right to vote . . . constitutes irreparable injury." *Obama for America v. Husted*, 697 F.3d 423, 436 (6th Cir. 2012).

1. Absentee Voting Time Period

HF 516 reduces the period for absentee voting from 40 days preceding a primary or general election to 29 days. Iowa Code §§ 53.8(1), 53.10(1), 53.11(1)(a). The Plaintiffs cite to data from the 2016 general election, which showed that between forty and 30 days prior to the election, 88,163 absentee ballots were cast and received. Burden Decl. ¶ 48. Professor Barry Burden, a political scientist, opined that "[v]oters accustomed to voting between the 40th and 29th day before the election will now be required to change the date and/or method by which they vote." *Id.* He further provided that disruptions to voting habits raise costs and deter participation." *Id.* The Plaintiffs also argue that, aside from the burden upon individual voters, the shortened timeframe to cast absentee ballot will cause the League of United Latin American Citizens of Iowa (LULAC) to divert time and resources to help educate voters on HF 516's new requirements and aid voters in complying with them. The State argues that the Plaintiffs cannot show irreparable harm from the decreased time period to cast absentee ballots, considering that more absentee ballots were cast in the June 2018 primary than any other primary in Iowa's history. Williams Aff. ¶ 8. The State also mentions that Iowa's absentee voting laws are some of the most favorable to voters in the nation, noting that Iowa is one of only a handful of states that have

ever allowed voters to cast an absentee ballot more than 29 days prior the date of a primary or general election.

The court does not find data from the June 2018 primary persuasive nor indicative of how the changed absentee voting period would affect voters in a general election. Voters in a primary election must be registered with a particular party, whereas in a general election there is no such requirement. Therefore, the voter pool is markedly different in a primary election versus a general election. Voters who cannot vote during the newly established time period to cast absentee ballots will suffer harm if the law continues to remain in effect. Based upon the number of voters who cast ballots during the time unavailable to cast ballots under HF 516 and the information provided by Professor Burden, the court finds that voters will be harmed if this shortened time frame continues to remain in effect for the 2018 election. Once such harm occurs, it cannot be repaired, as voters cannot go back and cast a ballot after the election is held. A voter disenfranchised by this change has no remedy. The Plaintiffs have proved that they will suffer irreparable harm if this provision of the law is not temporarily enjoined.

2. Absentee Voting Signature-Matching Provisions

The Plaintiffs argue that HF 516's signature-matching requirements burdens, and may even eliminate, Iowa voters' right to vote. HF 516 allows county auditors to reject both applications for absentee ballots and absentee ballots themselves "if it appears to the commissioner that the signature on the application/envelope [respectively] has been signed by someone other than the registered voter, in comparing the signature on the application to the signature on record of the registered voter named on the application." Iowa Code §§ 53.2(5); 53.18(3). If either the request or the return envelope are deemed defective due to mismatching signature, the commissioner is to notify the voter, but only if the ballot was received by 5:00 P.M. on the Saturday preceding the election. *Id.* §§ 53.2(3), 53.18(3). Thus, if a county auditor deems a ballot defective due to mismatching signature and the ballot was received after

5:00 P.M. on the Saturday preceding election, that voter's vote will not be counted without notice to the voter. *Id.* 53.2.

Voters who are notified of a defect in their absentee ballot due to a signature mismatch have the ability to cure the defect by either requesting a new absentee ballot and returning it by the election day deadline or voting in person on election day. *Id.* § 53.18(3). Because voters must mail a request for an absentee ballot eleven days prior to an election, any voter who was not informed of the signature defect before this deadline will lose the opportunity to apply for an absentee ballot by mail. *See id.* §§ 53.2, 48A.9. However, a voter may request an absentee ballot in person at the commissioner's office or any location designated by the commissioner up until the day before election day. *See id.* § 53.2. For voters who request to vote absentee due to an inability to vote in person, this may cause disenfranchisement.

The Plaintiffs presented a declaration by Dr. Linton Mohammed, a handwriting expert, who explained non-experts are more likely to conclude that two signatures do not match one another, and they are more likely to erroneously conclude that two signatures do not match. Mohammed Decl. ¶ 33. Dr. Mohammad also stated voters who are younger, older, or do not speak English as a first language are more likely to have their signatures rejected for failing to match. *Id*. at ¶ 31. The Plaintiffs note, in Iowa, these groups are more likely to vote for Democrats. Burden Decl. ¶ 67. Further, the Plaintiffs also point out that in the 2016 election, 9 percent of all absentee ballots case were received after Saturday at 5 P.M. Burden Decl. ¶ 60. Thus, any voter whose ballot is received after 5 P.M. on the Saturday before an election and deemed defective, correctly or not, will be disenfranchised. *See* Iowa Code § 53.18(3) ("If the affidavit envelope or the return envelope marked with the affidavit contains a defect that would cause the absentee ballot to be rejected by the absentee and special voters precinct board, . . . the voter's absentee ballot shall not be counted [unless the defect is timely cured]."). Voters who are not aware their

absentee ballot was deemed effective will not act to cure a defect, and therefore their ballot will not be counted unbeknownst to them.

In response, the State again points to previous county-wide special elections held throughout the state and the June 2018 primary election in which the signature matching provision was in effect. The State notes the Plaintiffs have not identified a single individual whose vote was not counted because it was received after 5:00 P.M. on the Saturday before the election and contained a signature defect.[2]

Voters whose ballots are erroneously deemed defective under the signature matching provision of 516 will be harmed if the law is not temporarily enjoined, either because they will be required to overcome further obstacles in order to cast an absentee ballot, or in some cases, their ballot may not be counted at all. Based on sheer probability and the amount of absentee ballots previously received after the Saturday at 5 P.M. deadline, it is nearly certain at least one voter will be disenfranchised as a result of the handwriting matching provision. Once such harm occurs, it cannot be repaired, as voters cannot go back and cast a ballot after the election is held. The Plaintiffs have proved that they will suffer irreparable harm if this provision of the law is not temporarily enjoined.

3. Voter Identification Number on Absentee Ballot Requests Requirement

HF 516 now requires that a registered voter include their voter verification number on applications for absentee ballots. Iowa Code § 53.2(4)(a)(4). A voter's verification number is either their driver's license number, nonoperator's identification card number, or voter identification number assigned to them by the state commissioner pursuant to section 47.7 subsection (2). *Id.* § 53.2(4)(c). However, the same statute provides that "[i]f insufficient information has been provided, including the absence of a voter verification number, either on a prescribed form or on an application created by the applicant, the commissioner shall, by the best means available, obtain the additional necessary

[2] At the hearing, the Plaintiffs discussed they would have no way of knowing whether any individuals were so affected, nor would the voters themselves, unless that information was provided to them by the State because the voter would never be notified the vote was not counted.

information." *Id.* § 53.2(4)(b). Nonetheless, the actual absentee ballot application form states that the voter verification number is required. Ex. G.

Plaintiffs argue that requiring registered voters to include their voter verification number on applications for absentee ballots dissuades voters from completing applications for absentee ballots, either because they do not know their voter verification number offhand or because they are reluctant to share the number on either the application or with a canvasser who is helping them complete an application. *See e.g.*, Henry Decl. ¶ 9 (stating that when encouraging voters to sign up for absentee ballots through canvassing for LULAC, many voters declined to fill out absentee ballot applications once they were requested to provide a voter identification number). Plaintiffs also argue that all materials disseminated by the State that state that a voter verification number is required on all applications for absentee ballots is misleading and an inaccurate depiction of the law, considering a county auditor may supply that information on applications for absentee ballots pursuant to Iowa Code section 53.2(4)(b).

Under the law as it is written, a voter is and should be eligible to apply for an absentee ballot without providing a voter verification number. The evidence presented establishes that some voters are dissuaded from applying for absentee ballots if they are required to provide their voter identification number. Registered voters who do not request absentee ballots because they are led, by the State's efforts, to believe they are unable to request an absentee ballot without providing a voter verification number will be harmed if this state action is not temporarily enjoined. This particularly affects registered voters who are unable to vote on election day or can otherwise only vote by absentee ballot, and it imposes an additional obstacle for voters to cast a ballot. Once such harm occurs, it cannot be repaired, as voters cannot go back and cast a ballot after the election is held. The Plaintiffs have proved that they will suffer irreparable harm if this State action is not temporarily enjoined.

4. The State's Public Education Efforts

HF 516 requires registered voters who are voting in person to present proof of identification beginning in 2019. Iowa Code § 49.78(1). This law is to go into effect in 2019. *Id.* Iowa Code section 49.78(2) outlines the types of permissible identification. For elections conducted in 2018, poll workers will ask voters for identification, but registered voters who do not present identification will be permitted to vote a regular ballot "upon signing an oath attesting to the voter's identity." Iowa Code § 49.78(8). HF 516 requires the Secretary of State to "develop and implement a comprehensive and statewide public education plan, including multimedia advertising" to inform voters about new election day requirements. HF 516 § 75. The Plaintiffs argue the State's public education efforts have been misleading.

As part of the public education campaign, the Secretary of State developed a logo that depicts a list with checkmarks, consisting of: (1) register, (2) ID, and (3) vote. Ex. H; Ex. I; Ex. J. The Plaintiffs argue this may dissuade voters who do not have the requisite identification, but would be permitted to vote by signing an oath attesting to their identity, from voting. This contention was supported by Professor Burden. Burden Decl. ¶ 75.

Voters who do not possess a required form of identification, but would be eligible to vote by attesting to their identity, will be harmed if they are led by the efforts of the State to believe they are ineligible to vote. Such disenfranchisement is a certain and great harm. Once such harm occurs, it cannot be repaired, as voters cannot go back and cast a ballot after the election. The Plaintiffs have proved that they will suffer irreparable harm if this State action is not temporarily enjoined.

B. <u>Likelihood of Success on the Merits</u>

Plaintiffs must next show they have a likelihood of succeeding on the merits. The parties disagree as to what legal standard the court must employ when considering whether the challenged provisions HF 516 and associated State actions violate the Iowa Constitution. The Plaintiffs argue the law must be evaluated either under the *Anderson-Burdick* standard, which was developed by the United

States Supreme Court to evaluate restrictions on the right to vote under the United States Constitution's Equal Protection Clause and First Amendment, or under a more exacting standard, considering that the right to vote is enumerated in Article II, section 1 of the Iowa Constitution and has consistently been deemed a fundamental right by Iowa courts.[3]

1. Level of Scrutiny

Because the federal constitution has no clause directly protecting the right to vote, the United States Supreme Court has found that the right to vote is protected by the Equal Protection Clause and the First Amendment of the United States Constitution. *See, e.g.*, *Bush v. Gore*, 531 U.S. 98, 104–05 (2000); *Anderson v. Celebrezze*, 460 U.S. 780, 786–95 (1983). Federal courts have developed a flexible framework known as *Anderson-Burdick* to evaluate whether restrictions on the right to vote are constitutional under the federal constitution. Under this standard, the court makes the following considerations:

> [T]he court must first consider the character and magnitude of the asserted injury to the rights protected by the [Constitution] that the plaintiff seeks to vindicate. Second, it must identify and evaluate the precise interests put forward by the State as justifications for the burden imposed by its rule. Finally, it must determine the legitimacy and strength of each of those interests and consider the extent to which those interests make it necessary to burden the plaintiff's rights.

Ohio Democratic Party v. Husted, 834 F.3d 620, 626–27 (6th Cir. 2016) (*quoting Green Party of Tennessee v. Hargett*, 791 F.3d 684, 693 (6th Cir. 2015)). The amount of deference to afford to the state voting law depends on the severity of the restriction.

[3] Article II section 1 of the Iowa Constitution Provides:

> Every citizen of the United States of the age of twenty-one years, who shall have been a resident of this state for such period of time as shall be provided by law and of the county in which he claims his vote for such period of time as shall be provided by law, shall be entitled to vote at all elections which are now or hereafter may be authorized by law. The general assembly may provide by law for different periods of residence in order to vote for various officers or in order to vote in various elections. The required periods of residence shall not exceed six months in this state and sixty days in the county.

> If a state imposes severe restrictions on a plaintiff's constitutional rights (here, the right to vote), its regulations survive only if narrowly drawn to advance a state interest of compelling importance. On the other hand, minimally burdensome and nondiscriminatory regulations are subject to a less-searching examination closer to rational basis and the State's important regulatory interests are generally sufficient to justify the restrictions. Regulations falling somewhere between—i.e., regulations that impose a more-than-minimal but less-than-severe burden—require a flexible analysis, weighing the burden on the plaintiffs against the state's asserted interest and the chosen means of pursuing it.

Id. at 627 (citations and quotations omitted).

However, the Plaintiffs pursue claims exclusively under the Iowa Constitution. Iowa courts "subject laws to different levels of review based on their classifications and the rights they affect." *State v. Simmons*, 714 N.W.2d 264, 277 (Iowa 2006). "If a statute affects a fundamental right . . . it is subjected to strict scrutiny. The State must prove it is narrowly tailored to the achievement of a compelling state interest." *Id.* (quoting *Sanchez v. State*, 692 N.W.2d 812, 817 (Iowa 2005)). "Conversely, if the right at stake is not fundamental, [Iowa courts] apply the 'rational-basis test,' which considers whether there is a 'reasonable fit between the government interest and the means utilized to advance the interest.'" *Planned Parenthood of the Heartland v. Reynolds ex rel. State*, No. 17-1579, --- N.W.2d ---, 2018 WL 3192941, at *21 (Iowa June 29, 2018) (quoting *State v. Hernandez-Lopez*, 639 N.W.2d 226, 238 (Iowa 2002)). However, "reasonable regulations that do not directly and substantially interfere with [a fundamental] right may be imposed." *McQuiston v. City of Clinton*, 872 N.W.2d 817, 833 (Iowa 2015).

"Voting is a fundamental right in Iowa . . . . It occupies an irreducibly vital role in our system of government by providing citizens with a voice in our democracy and in the election of those who make laws by which we must all live." *Chiodo v. Section 43.24 Panel*, 846 N.W.2d 845, 848 (Iowa 2014) (citations omitted). Nonetheless, "[a]s with all rights, the right to vote is not absolute." *Id.* at 849.

The court must now decide how to frame the issue. The State contends that the court must consider whether the fundamental right to vote extends to the right to vote by absentee ballot. Accordingly, the State argues that it does not, and therefore strict scrutiny does not apply. In the same vein, the State also argues that the challenged provisions of HF 516 and associated State actions do not directly and substantially interfere with the right to vote, as they only affect the right to vote by absentee ballot. The Plaintiffs urge the court to adopt a more broad view of the right to vote and find that any restriction implicating such a fundamental right, including restrictions on the right to vote by absentee ballot and misleading campaigns information about voter verification number requirements, are subject to strict scrutiny. The Plaintiffs alternatively argue that they are likely to succeed on the merits of their claim even under the *Anderson–Burdick* framework developed and used by federal courts. The State points out the United States Supreme Court has explicitly found that the federal constitution does not protect the right to vote by absentee ballot. *See McDonald v. Board of Election Com'rs of Chicago*, 394 U.S. 802, 807–808 (1969). However, this is not dispositive of the issue, as the Iowa Constitution is routinely construed to more broadly protect the rights of Iowans than does the United States Constitution. *See, e.g.*, *Planned Parenthood of the Heartland*, 2018 WL 3192941. Furthermore, the federal constitution does not contain an explicit clause protecting the right to vote.

The Plaintiffs also argue that the signature matching provision of HF 516 denies voters the right to procedural due process under Article I, section 9 of the Iowa Constitution, as it may deny voters the right to cast a ballot without the opportunity to be heard. In making this argument, the Plaintiffs are referring to voters whose absentee ballots are not received by the county auditor until after 5:00 P.M. on the Saturday preceding an election and whose ballots are deemed defective, as these voters' ballots will not be counted without notice to the voter and

without the opportunity for the voter to cure the defect. The Plaintiffs further argue the signature matching requirement violates the right to equal protection under the Iowa Constitution, as voters in each county may be treated differently based on differences in how different county auditors conduct signature matching.

The court finds, under the Iowa Constitution, it is well settled that voting is a fundamental right. Thus, any law imposing restrictions on exercising this fundamental right or state actions affecting this fundamental right, must be subject to strict scrutiny. The court finds that, when considering the number of Iowans who utilize absentee voting,[4] the challenged provisions of HF 516 and the actions taken by the State in publicizing HF 516's changes to Iowa's voting procedures substantially and directly interfere with Iowans' constitutional right to vote. Absent voters laws have been on the books in Iowa nearly a century. *See* Compiled Code of Iowa, Title IV, Ch. 9, §§ 521-534 (1919). The law has evolved over the last century but the constraints put on the right to vote absentee by the challenged provisions of HF 516 are a clear burden on the longstanding fundamental right to vote.

The State argues that a heightened standard of review will deter the Iowa Legislature from experimenting with different voting systems and regulations and expanding voters' rights, as once the voters' rights are expanded, any return to the status quo will be difficult to obtain if the law is subject to strict scrutiny analysis. This court does not find the argument persuasive. The legislature is not entitled to a limitless ability to regulate fundamental rights. This is true with all rights deemed fundamental under the Iowa Constitution. *See, e.g.*, *Planned Parenthood of the Heartland*, 2018 WL 3192941 (finding that laws restricting a woman's fundamental right to terminate a pregnancy, derived from the fundamental right to privacy and bodily autonomy,

[4] In the 2016 general election, 41 percent of the total votes cast in Iowa were submitted as absentees. Burden Decl. ¶ 16.

are subject to strict scrutiny); *Hernandez-Lopez*, 639 N.W.2d at 238 (finding that laws implicating an individual's interest in freedom from bodily restraint are subject to strict scrutiny); *Santi v. Santi*, 633 N.W.2d 312, 318 (Iowa 2001) (finding that laws affecting parents' ability to decide who, outside of their nuclear family, may have visitation with their children directly and substantially interfered with the fundamental right to parent and were thus subject to strict scrutiny).

The court will now analyze whether the Plaintiffs are likely to succeed on the merits of their claim when a strict scrutiny analysis is applied to the challenged provisions of HF 516 and other actions taking by the State that affect Iowans' fundamental right to vote.

a. Absentee Voting Time Period

HF 516 reduced the period to cast absentee ballots, either by mail or in person, from 40 days to 29 days, removing two weekends available to voters to cast ballots. The 40 day rule has been in effect since 2003. *See* House File 2472 §§ 62, 63 (2002); Iowa Code §§ 53.10, 53.11. In 2016, by the 29th day preceding the presidential election, over 88,000 absentee ballots had already been received by county auditors. Burden Decl. ¶ 48. Clearly, many Iowans utilized these eleven days which are unavailable to them under HF 516. The Plaintiffs assert that many voters maintain voting habits, and disruptions to such habits may result in decreased voter participation. *Id.* at ¶ 21. Iowans have had these extra eleven days to cast absentee ballots for over ten years, and the evidence shows that a significant amount of the electorate have utilized them. The court finds retracting eleven days, including two weekends, from the window of time to submit absentee ballots is a substantial burden on the fundamental right to vote.

The State can prevail by showing that shortening the time available to submit absentee votes by eleven days is narrowly tailored to serve a compelling government interest. The State

argues it has a compelling interest in preserving the integrity of its elections, deterring and eliminating voter fraud, and ensuring all elections are fair. The court agrees this is indeed a compelling government interest. However, the State has not even attempted to explain how reducing the time frame for voters to cast absentee ballots will ensure fairness or preserve the integrity of Iowa's elections. The State has not indicated the eleven extra days previously available to voters to cast absentee ballots negatively impacted the integrity or fairness of Iowa's elections in any capacity. The law is not narrowly tailored to serve a compelling government interest. The Plaintiffs are likely to succeed on the merits on their claim related to this provision of HF 516 and Iowa Code sections 53.8(1), 53.10(1), and 53.11(1)(a).

b. Absentee Voting Signature Matching Requirement

HF 516 also allows county auditors to reject requests for absentee ballots and absentee ballots that have been returned if the county auditor determines that the signature contained on either the request or the return envelope do not match the signature of record for the registered voter. Voters voting by absentee ballot are only entitled to be notified that their ballot is defective if it is received by 5:00 PM on the Saturday preceding the election. Iowa Code §§ 53.2, 53.18(3).

The signature matching provision provides no methods by which county auditors are to evaluate whether signatures match. As stated above, people who are not handwriting experts are more likely to erroneously conclude that two signatures do not match than are trained handwriting experts. Mohammed Decl. ¶¶ 28–36. Absentee voters whose ballots are deemed defective may lose the opportunity to request an absentee ballot if they are unable to request a ballot in the allotted time or if they are unable to obtain one from the commissioner's office in person. *See* Iowa Code § 53.2(1) (stating registered votes may request an absentee ballot in person at the commissioner's office any day before election day or

may make a written application for an absentee ballot any day between 120 days before the election and 10 days prior to an election). Absentee ballots that are received after 5:00 P.M. on the Saturday preceding the election which are deemed defective are not counted with no notice to the voter.

Voters whose ballots are erroneously deemed defective will have to overcome another obstacle to vote. Either they must submit a new request by mail, if time permits, and if not, they must go to the commissioner's office in person to request a ballot or vote on election day. Voters often request to vote by absentee ballot because they are unable to vote in person on election day or because they are otherwise unable to request a ballot at the commissioner's office. Burden Decl. ¶¶ 61–61. This may impose a heavy burden on a voter, or it may entirely disenfranchise them. Furthermore, refusing to allow voters whose absentee ballots are received after 5 P.M. on the Saturday preceding an election an opportunity to cure an alleged defect in their ballot not only substantially burdens their fundamental right to vote, it entirely eliminates it. Over 60,000 absentee ballots were received after the 5 P.M. deadline in the 2016 presidential election. If county auditors have unbridled discretion to reject ballots based on signatures they find do not match, and considering these analyses will be done by county officials with no official guidance or handwriting expertise, there is potential for erroneous determinations of a mismatch. This is a substantial burden on Iowans' fundamental right to vote.

The State does not explicitly refer to a specific interest in allowing county auditors the ability to reject absentee ballot requests or returned absentee ballots based on mismatched signatures, but the court can surmise that the same interest in safeguarding elections and deterring and eliminating fraud apply. Again, the court finds protecting the integrity and fairness of elections is a compelling government interest. However, since this method is likely to substantially burden or eliminate more voters' ability to exercise their right to vote, and the State has not pointed to any evidence that the State experiences any

voter fraud whatsoever without such a system, the law is not narrowly tailored. The Plaintiffs have a likelihood of success on the merits on their claim the signature matching requirement is an unconstitutional restraint on the fundamental right to vote under the Iowa Constitution.[5]

c. Voter Identification Number on Absentee Ballot Requests Requirement

HF 516 now requires registered voters to include their voter verification number on requests for absentee ballots. This is either a driver's license number, a nonoperator's identification card number, or an actual voter verification number which is provided to voters who do not possess either of the previously specified forms of identification. HF 516 § 6; Iowa Code § 53.2(4)(a)(4) and (4)(c). According to the Iowa Secretary of State's website, the Secretary of State automatically sent out approximately 120,000 voter ID cards to registered voters who did not possess either a driver's license or nonoperator's identification card. Ex. J. Iowa Code section 53.2(4)(b) provides that if the voter does not include a voter verification number on an absentee ballot application, "the [county auditor] shall, by the best means available, obtain the additional necessary information." However, the absentee ballot form states: "[a]n absentee ballot cannot be issued until ID number is provided" and asterisks on the form indicate that an identification number is "required." Marshall Affidavit; Ex. G.

The Plaintiffs argue the misleading information on the absentee ballot request form constitutes a substantial burden on the right to vote, because many people do not have their identification numbers readily available or are reluctant to share them with canvassers who are signing them up to request absentee ballots. *See* Burden Decl. ¶ 47; Henry Decl. ¶ 9; Blair Decl. ¶¶ 7–10.

[5] That is not to say that all signature matching requirements are inherently unconstitutional. *See, e.g.*, Burden Decl. ¶¶ 62–63 (explaining Colorado and Oregon's extensive procedures guiding signature matching requirements and allowing voters the opportunity to cure so long as their ballot was submitted timely).

The State offers no justification for promulgating materials that seemingly only aim to promote an inaccurate depiction of current Iowa law. Likewise, the State does not offer a justification for requiring that an absentee ballot cannot be issued unless voters include their voter verification numbers on absentee ballot applications, even though county auditors are statutorily permitted to obtain this information and supplement applications accordingly. While the court can infer requiring voters to include their voter verification number on applications for absentee ballots may reduce administrative costs to some extent, this interest is not compelling. County auditors are able to ascertain whether individuals applying for absentee ballots are registered to vote, and they have done so successfully prior to the passing of HF 516. Voters are not required to supply a voter identification number to obtain an absentee ballot under Iowa law if the auditor can obtain the information by the best means available. Instructing voters they are required do so as a prerequisite to obtaining an absentee ballot is not narrowly tailored to serve any State interest. The effect of these efforts and the change on the absentee voter form harms voters and poses an additional and unnecessary obstacle in the way of exercising the right to vote. Furthermore, it has caused confusion among the electorate, state officials, and election volunteers. The Plaintiffs will likely succeed on the merits on their claim that the State's action promoting materials that state voters are required to provide voter verification numbers to obtain an absentee ballot and requiring voters to provide voter verification numbers on applications for absentee ballots is a violation of the fundamental right to vote, enumerated in Article II, section 1 of the Iowa Constitution.

d. The State's Public Education Campaign

HF 516 also requires the Secretary of State to "develop and implement a comprehensive and statewide public education plan, including multimedia advertising, in order to inform the

voters of this state of the election day identification requirements contained in" the law. The State has done so by promulgating various materials, one containing an image with three check boxes: one saying "register," the next saying "ID," and the next saying "vote." Ex. H; Ex. I. Plaintiffs argue this is misleading, considering an ID is not required to vote until 2019. Iowa Code § 49.78(8). The State argues that voters do need a form of identification to vote on election day in 2018, however the State also notes that voters have the alternate option to attest to their identity. The State says this is part of the "soft roll out" of HF 516, and it will help voters get used to bringing their ID to vote when it *is* a prerequisite to voting in 2019. The Plaintiffs contend it dissuades people from voting and confuses both voters and poll workers.

Presenting an identification card is not a requirement to vote if voters can vote without presenting such identification. A requirement can be defined as a) something wanted or needed, i.e., a necessity, or b) something essential to the existence or occurrence of something else, i.e., a condition. *See Requirement Definition*, Merriam–Webster, https://www.merriam-webster.com/dictionary/requirement (last visited July 19, 2018). If a registered voter may cast a ballot without showing an identification card, then it is neither a condition of voting nor is it a necessity. Thus, providing an identification card is not a requirement to casting a ballot until 2019. The media promulgated by the State would clearly lead voters to believe that some form of identification is required to vote in an election in 2018. Leading voters to believe they will be unable to cast a ballot without displaying one of the permitted identification cards, contrary to the laws of the State, does not serve a compelling State interest, nor is it narrowly tailored to serve any compelling State interest if one did exist. The Plaintiffs are likely to succeed on the merits of their claim that the State's public education efforts misleads voters by stating proof of

identification is required to vote in elections in 2018, and thus unconstitutionally restricts the fundamental right to vote enumerated in Article II, section 1 of the Iowa Constitution.

C. Balancing the Harms

"Before granting an injunction, the court should carefully weigh the relative hardship which would be suffered by the enjoined party upon awarding injunction relief." *Ney v. Ney*, 891 N.W.2d 446, 451 (Iowa 2017). The Plaintiffs argue the State will not suffer any harm if the temporary injunction is put in place because the temporary injunction will merely restore the status quo of Iowa's voting laws. The State asserts issuing the injunction will not restore the status quo, as HF 516 has been in place for all of 2018, and further, the State asserts it will be harmed because it has already invested substantial resources in retraining county officials and volunteers to comply with the new regulations. As stated above, the State has suggested no real threat to the integrity of Iowa's voting system without the new regulations contained in HF 516, so aside from the costs of directing the county officials and volunteers to return to the procedures in place before HF 516 was in effect, the harm to the registered voters who may become disenfranchised or experience substantial obstacles in voting is greater than any harm to the State. Because the State has not presented any evidence that Iowa elections will be subject to fraud if the provisions in HF 516 do not go into effect, the harm Plaintiffs will suffer substantially outweighs any harm the State may suffer.

IV. BOND

Iowa Rule of Civil Procedure 1.1508 provides that an "order directing a temporary injunction must require that before the writ issues, a bond be filed, with a penalty to be specified in the order, which shall be 125 percent of the probable liability to be incurred." In its brief, the State estimated that it would cost between $500,000 and $1.8 million to revert to the voting laws in place before HF 516 was implemented. The State pointed to the costs of revising systems and materials, retraining election

officials, and updating voters. See Williams Affidavit ¶ 15. Thus, the State agued this court should impose a bond of $2.25 million, which would be 125 percent of the highest possible estimated cost. The State's high-end cost estimate is more than double its estimated costs to date of $724,000 to implement all provisions of HF 516. Williams Affidavit ¶ 15. It is inconceivable it would cost twice as much to instruct county auditors to revert to their prior way of operating on several provisions of the new laws as it did to train them on a completely new law. It seems an email to county auditors would suffice. Further, it is unlikely general election training for election day and election office workers has even occurred at this time. The purpose of bond is to indemnify the person or entity enjoined or restrained from damage through the use of the writ. *See PICA USA v. North Carolina Farm Partnership*, 672 N.W.2d 718 (Iowa 2003).

Federal courts applying the analogous Federal Rule of Civil Procedure 65(c) have declined to require the posting of any security when a party seeks to protect the right to vote. *See Georgia State Conference NAACP v. Georgia*, No. 1:17-CV-1397-TCB, 2017 WL 9435558, at *6 (N.D. Ga. May 4, 2017) (quoting *Complete Angler, LLC v. City of Clearwater*, 607 F. Supp. 2d 1326, 1335 (M.D. Fla. 2009)) (concluding "[w]aiving the bond requirement is particularly appropriate where a plaintiff alleges the infringement of a fundamental constitutional right").

The court finds, based on the record in this case, it cannot reliably concluded implementing this Order would result in a "probably liability" to the Secretary of State at all, but certainly no more than $2,000. Therefore, a bond of $2,500 is appropriate.

V. ORDER

IT IS THE ORDER OF THE COURT that the Motion for a Temporary Injunction is GRANTED.

IT IS FURTHER ORDERED that House File 516's signature matching requirements for applications for absentee ballots, HF section 30; Iowa Code section 53.2(5) are hereby ENJOINED;

IT IS FURTHER ORDERED that House File 516's signature matching requirements on absentee ballot return envelopes, HF 516 section 31; Iowa Code section 53.18(3) are hereby ENJOINED.

IT IS FURTHER ORDERED that House File 516's shortening of the timeframe to cast absentee ballots from 40 to 29 days, HF sections 51, 52 and 53; Iowa Code sections 53.8, 53.10 and 53.11 are hereby ENJOINED.

IT IS FURTHER ORDERED that House File 516's requirement that an absentee ballot application include a voter verification number, HF 516 section 6; Iowa code section53.2(4) are hereby ENJOINED.

IT IS FURTHER ORDERED that the Secretary State is ENJOINED from including on the absentee ballot application language stating "[a]n absentee ballot cannot be issued until ID number is provided" or indicating that such information is "required";

IT IS FURTHER ORDERED that the Secretary State is ENJOINED from disseminating materials with the Voter Ready graphic or stating "Iowa voters will be asked to show a form of valid identification when voting," or similar words, without a clear statement that identification is not required to vote in 2018; and

IT IS FURTHER ORDERED that the temporary injunction will become effective upon Plaintiffs posting of a bond of $2,500 and will remain enjoined pending resolution of this case.

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State of Iowa Courts

Type: OTHER ORDER

Case Number	**Case Title**
CVCV056403	LEAGUE OF UNITED LATIN AMER CITIZENS ETAL VS PAUL PATE ETAL

So Ordered

Karen A. Romano, District Court Judge,
Fifth Judicial District of Iowa