

IN THE IOWA DISTRICT COURT IN AND FOR JOHNSON COUNTY

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| League of United Latin American Citizens |) | |
| of Iowa and Majority Forward, |) | |
| |) | |
| Plaintiffs, |) | |
| |) | No. CVCV081901 |
| vs. |) | |
| |) | RULING |
| Iowa Secretary of State Paul Pate, in his |) | |
| official capacity, |) | |
| |) | |
| Defendant. |) | |
| |) | |
| Donald J. Trump for President, Inc., |) | |
| the Republican National Committee, the |) | |
| National Republican Senatorial Committee, |) | |
| The National Republican Congressional |) | |
| Committee, and the Republican Party of |) | |
| Iowa, |) | |
| |) | |
| Intervenors. |) | |

Plaintiffs want the court to temporarily enjoin enforcement of two portions of Section 124 of House File (HF) 2643 (2020) (“HF 2643”) having to do with a county auditor’s ability to access available information and complete absentee ballot applications submitted with missing information. In this case, the standard by which the court reviews Plaintiffs’ claims makes a large difference as to outcome. Plaintiffs claim that HF 2643 burdens the fundamental right to vote, violates Iowa’s equal protection guarantee, and violates due process under the Iowa Constitution. Since voting is a fundamental right, Plaintiffs argue that the court should apply strict scrutiny when their claims.

Defendant and Intervenors (whose positions align and are collectively hereafter “Defendants”) contend that when applying a rational basis test to Plaintiffs’ claims, the Plaintiffs cannot establish a likelihood of success on the merits, and so the request for a

temporary injunction should be denied. A rational basis test is applicable, according to the Defendants, because the claims raised by Plaintiffs concern absentee ballots, not voting itself, and so no fundamental right is involved. They also argue that it is inappropriate for the court to change existing election rules this close to the election.

The court agrees that case law requires the court to apply a rational basis test to its review of HF 2643. Rational basis is a deferential standard in which the court has a limited role. The fact that HF 2643 is based on policy choices that many may disagree with, or that it may not be perfect in its application, does not aid the Plaintiffs. Applying a rational basis standard of review, the court finds that Plaintiffs have not demonstrated that they are likely to succeed on the merits; so, the motion for temporary injunctive relief must be denied.

I. FACTUAL AND PROCEDURAL BACKGROUND

The court incorporates the following factual and procedural background for this case, from Judge Miller's September 8, 2020, Ruling on Motion to Intervene:

Plaintiffs filed a Petition in Law and Equity on July 14, 2020. Plaintiff League of United Latin American Citizens (LULAC) is located in Des Moines, Iowa, and is a Latino civil rights organization. Plaintiffs state LULAC has approximately 150,000 members throughout the United States and Puerto Rico, and states its mission is to advance the economic condition, educational attainment, political influence, health, housing, and civil rights of all Hispanic nationality groups through community-based programs operating at more than 1,000 LULAC councils nationwide. Plaintiff Majority Forward is located in Washington, D.C., and is a not-for-profit 501(c)(4) organization created to support voter registration and voter turnout efforts. Plaintiffs state Majority Forward's primary mission is to encourage full participation by voters in the United States (including Iowa) election process. Defendant is the Iowa Secretary of State, whose responsibilities include being the chief election official in Iowa; the Iowa commissioner of elections; and the Iowa registrar of voters.

Plaintiffs seek temporary and permanent injunctive relief restraining Defendant from enforcing and implementing Section 124 of House File 2643 (2020), hereinafter referred to as HF 2643, as well as a declaratory judgment that implementing Section 124 of HF 2643 violates the Iowa Constitution. Plaintiffs describe HF 2643 as prohibiting election officials from using information readily available to them in voter registration databases to fill in information that is missing from a voter's absentee ballot request, even when the election officials have sufficient information to identify the voter. Plaintiffs assert HF 2643 mandates a cumbersome and lengthy process requiring election officials to contact the voter directly by telephone or email to obtain the missing information, and, if election officials are unable to reach the voter by telephone or email, they must mail a letter to the voter requesting additional information. Plaintiffs further assert that in an election year when mail delays are anticipated to become increasingly common and election officials already will be overtaxed attempting to process more absentee ballot requests than usual, the steps required by HF 2643 will lead to unnecessary delay and increase the risk of disenfranchisement of eligible, lawful Iowa voters. Plaintiffs contend county election officials do not have valid telephone and email contact for many voters, and some voters refuse to provide this information in order to protect their privacy. Plaintiffs also contend county election officials must send deficiency notices to countless voters and require these voters to wait to receive a letter in the mail before they are able to cure their requests and receive an absentee ballot. Plaintiffs claim this delayed notification leads to delays in absentee ballot mailing and increases the risk that voters will not receive an absentee ballot with enough time to return it, if they receive one at all.

Plaintiffs allege this process is overly burdensome, particularly during the ongoing COVID-19 public health emergency. Plaintiffs further allege more voters are turning to absentee voting due to the risks associated with COVID-19, and HF 2643 has made absentee voting unnecessarily, irrationally, and illogically more difficult, for no justifiable reason. Plaintiffs claim HF 2643 introduces unconstitutional differential treatment of voters across Iowa, as voters who are unfamiliar with the absentee ballot process are more likely to make a mistake in filling out their forms. Plaintiffs also claim that counties have developed varying methods of addressing this situation, including sending out prefilled absentee ballot requests to voters, or hiring extra help to process requests under HF 2643, while others will not do any of these things or lack the resources to do so. Plaintiffs contend HF 2643 will abridge the right to vote and will prevent qualified voters from participating in Iowa elections by making it more difficult to cast absentee ballots, and will make the process more confusing and uncertain, especially for what Plaintiffs expect to be a high number of voters who will vote by absentee ballot. Plaintiffs also contend that voters who are notified too late or not at all will

effectively be denied their right to vote safely in the November general election.

Plaintiffs describe the steps for absentee voting in Iowa as follows: Every eligible voter has the option to receive an absentee ballot, and to receive an absentee ballot, Iowa voters must complete an absentee ballot request containing certain information, including their date of birth, permanent address, and their verification number. Plaintiffs state this is a voter's Iowa driver's license non-operation identification number or the Voter PIN (collectively referred to as "Absentee ID Number"). Plaintiffs further state that for Iowans who do not have an Iowa-issued driver's license or non-operator identification, county election officials will mail such voters a Voter Identification Card containing their Voter PIN. The Secretary of State provides a "State of Iowa Official Absentee Ballot Request Form" on its website, asking voters to fill in their full name; date of birth; Absentee ID Number; Iowa residential address; address to mail the absentee ballot if different from the voter's residential address; telephone number and email address; election date or type; and an affidavit attesting "I swear or affirm that I am the person named above and I am a registered voter or I am entitled to register at the address listed on this form. I am eligible to receive and vote an absentee ballot for the election indicated above."

Plaintiffs assert that nowhere on the Secretary's form does it say certain information such as the Absentee ID Number, date of birth, or permanent address is required to receive an absentee ballot. Plaintiffs state that Iowans seeking to vote absentee for any given election may submit absentee ballot requests to local election officials between 120 days and 10 days before the election, but election officials can send absentee ballots to voters no earlier than 29 days before election day. Plaintiffs further assert that in past elections, if a county election official received an absentee ballot request omitting required information, the official was able to use "the best means available" to fill in this information for the voter. Plaintiffs claim that, in practice, election officials would quickly refer to the voter registration database to locate the missing information, process the request, and mail out the absentee ballot to the voter. Plaintiffs also claim that once the ballot request is reviewed and verified, the county election official mails the absentee ballot to the address included on the request. Plaintiffs state there is no permanent absentee voting list, and voters must take these steps each time they wish to vote absentee. Plaintiffs allege that, as a result, absentee voting has traditionally been less accessible to new voters, voters who participate infrequently in elections, and other groups of voters who tend to have less information about the voting process in general or absentee voting specifically, including younger voters, voters for whom English is a second language, and voters in minority communities. Plaintiffs further allege that

the steps involved in successfully completing an absentee ballot request are not insubstantial and often require voters to expend significant time and effort to complete, and a misstep or delay at any point by election officials increases the risk of complete disenfranchisement.

Plaintiffs assert that, more than ever, Iowans are turning to absentee voting to participate in elections. Plaintiffs point to the number of voters and absentee voters in the June 2, 2020 primary election in Iowa as proof of this. Plaintiffs further assert that, shortly after the June 2, 2020 primary, the Iowa Legislature acted to make it harder for Iowans to successfully vote absentee, including by enacting HF 2643. Plaintiffs claim HF 2643 resembles an administrative rule that Defendant filed in November, 2017, that similarly prohibited election officials from using their own voter registration system to obtain Absentee ID Numbers missing from absentee ballot requests (Iowa Administrative Code rule 721-21.306(53)). Plaintiffs state this rule has been permanently enjoined by the Polk County District Court, which found the rule to be unreasonable, arbitrary, capricious, and an abuse of discretion, and held that it was “irrational, illogical, and wholly unjustifiable to proscribe one method of doing so that has been used for the last forty years.” Plaintiffs allege that Republican lawmakers justified HF 2643 as a means of preventing voter fraud, even though, according to Plaintiffs, there is a dearth of evidence that there is a significant number of absentee ballot requests in Iowa, that fraudulently requested ballots are returned and counted without detection, or that the prohibition would prevent any such fraud. Plaintiffs further allege that many county election officials vocally opposed the new requirement and lobbied against its enactment, including the Iowa State Association of County Auditors. The Iowa Governor signed HF 2643 into law on June 30, 2020.

Plaintiffs contend HF 2643 burdens absentee voting by making it more difficult to request and vote an absentee ballot that will be counted by prohibiting the longstanding practice for supplying missing information from an absentee ballot request using the voter registration database. Plaintiffs also contend that voters who are unaware of their Absentee ID Numbers are especially burdened, since they are often unaware of what this number is, and while Defendant mailed Voter ID cards to about 123,000 Iowa voters in December, 2017, these cards are less likely to be carried by a voter on a daily basis and are more prone to loss. Plaintiffs assert that when the cards are likely to have been discarded or lost, it increases the risk that many voters will omit their Voter PIN from the request form and have to go through the burdensome process of being notified of the omission. Plaintiffs note that possessing an Absentee ID Number is not a voter qualification. Plaintiffs further assert that prospective voters are not made aware that failing to include information such as their Absentee ID Number, date of birth, or permanent residence

will lead to these extra barriers to cast an absentee ballot. Plaintiffs claim HF 2643 appears designed to result in voter confusion, delays in mailing absentee ballots, and ultimately disenfranchisement. Plaintiffs also claim that in Linn County, election officials only have a telephone number or email address for only 65,000 of about 155,000 registered voters in the county.

Plaintiffs allege that HF 2643 provides no minimum time that election officials must wait to hear back from a voter to whom they sent an email or called before sending notice by mail. Plaintiffs believe that, without uniform guidance, county election officials will mail voters notices at varying times, depending on the availability of office staff and capacity, which will lead to differential treatment of voters among and even within counties. Plaintiffs further allege that many of these contacts may go undelivered, due to spam filters, telephone calls going unanswered, or delays or problems in delivery of letters. Plaintiffs assert HF 2643 unnecessarily places the onus on absentee ballot applicants to be hyper vigilant to resolve a problem they do not know exists, and voters who do not speak English as a first language will be further burdened, since communications are likely to be made in English. Plaintiffs further assert that if contact is made later in the election cycle, voters are more at risk of being disenfranchised because the delay may give them less time to return their ballots to be counted, if at all. Plaintiffs contend that voters may also believe they are going to receive an absentee ballot but never do, which could cause confusion and threaten their ability to vote in person, and voters with disabilities also will face challenges if in-person voting is not an option for them. Plaintiffs also contend that HF 2643 operates to chill electoral organizing activity by requiring entities and individuals that engage in electoral and civic activity to devote significant time and resources to educating prospective voters about the changes brought about by HF 2643.

Plaintiffs point out the difficulties that COVID-19 has brought for voters, including not wanting to face crowds at the polls and the desire to vote by absentee ballot as a result. Plaintiffs state that county officials in Polk, Johnson, Linn, and Black Hawk counties have announced they will independently mail absentee ballot requests to voters, but only Johnson and Linn plan to prefill voters' Absentee ID Numbers on requests, to avoid confusion among voters who are unfamiliar with the Absentee ID Number requirement or unaware of their Voter PIN. Other counties do not plan any mass mailings of absentee ballot requests. Plaintiffs assert that the larger counties will require more staff to process a higher number of requests and contact voters, while smaller counties will lack the funds for additional staff, all of which will lead to a delay in processing absentee ballot requests and notifying voters. Plaintiffs further assert that voters

residing in larger counties will be more likely to receive timely notice than those living in smaller counties, due to limited budgets in smaller counties.

Plaintiffs claim that the State has no adequate interest in the challenged law and policy generally, and has even less interest during the ongoing pandemic. Plaintiffs assert that the State's interest cannot possibly outweigh the burdens that the challenged provision imposed on voters' fundamental right to vote, and HF 2643 needlessly creates more work for both voters and election officials. Plaintiffs further assert this burden is not necessary to safeguard Iowa elections, and Iowa has been proven to have top notch election integrity, as evidenced by Defendant's own statements regarding Iowa's election process. Plaintiffs point out that an absentee ballot applicant must swear an oath that they are who they say they are, and that they are eligible to vote.

Count I of the Petition is for violation of Article I, Section 9 and Article II, Section 1 of the Iowa Constitution (substantive due process and right to vote). Count II of the Petition is for violation of Article I, Sections 6 and 7 of the Iowa Constitution (undue burden). Count III of the Petition is for violation of Article I, Section 9 of the Iowa Constitution (procedural due process). Count IV of the Petition is for violation of Article I, Section 6 of the Iowa Constitution (equal protection).

Defendant has filed an Answer, denying the allegations of the Petition that are adverse to him.

Donald J. Trump for President, Inc., the Republican National Committee (RNC), the National Republican Senatorial Committee (NRSC), the National Republican Congressional Committee (NRCC), and the Republic Party of Iowa were granted leave to intervene in this matter based on their interest in voters having the opportunity to participate in fair elections and based on their interest in allocating their resources throughout the election season. These entities are committees to advance the election of Republican Party candidates, to manage the business of the Republican Party, to coordinate fundraising and election strategy, and to develop and promote the national Republican Party platform. The Intervenor's positions align with those of the Defendant

– they also assert that HF 2643 is constitutional and Defendant cannot be enjoined from implementing and enforcing it.

Plaintiffs filed the pending Motion for Temporary Injunctive Relief seeking an order enjoining HF 2643’s requirement that “[a] commissioner shall not use the voter registration system to obtain additional necessary information,” and HF 2643’s ban on commissioners from using the “best means available” to “obtain the additional necessary information” to cure absentee ballot applications with missing information.¹

¹ HF 2643, Section 124, amended Iowa Code § 53.2, which now provides, in relevant part:

4. a. To request an absentee ballot, a registered voter shall provide:

- (1) The name and signature of the registered voter.
- (2) The registered voter's date of birth.
- (3) The address at which the voter is registered to vote.
- (4) The registered voter's voter verification number.
- (5) The name or date of the election for which the absentee ballot is requested.
- (6) Such other information as may be necessary to determine the correct absentee ballot for the registered voter.

b. If insufficient information has been provided, including the absence of a voter verification number, either on the prescribed form or on an application created by the applicant, the commissioner shall, within twenty-four hours after the receipt of the absentee ballot request, contact the applicant by telephone and electronic mail, if such information has been provided by the applicant. If the commissioner is unable to contact the applicant by telephone or electronic mail, the commissioner shall send a notice to the applicant at the address where the applicant is registered to vote, or to the applicant’s mailing address if it is different from the residential address. If the applicant has requested the ballot to be sent to an address that is not the applicant’s residential or mailing address, the commissioner shall send an additional notice to the address where the applicant requested the ballot to be sent. A commissioner shall not use the voter registration system to obtain additional necessary information. A

They submitted supportive declarations from Joe Enriquez Henry, the political director for LULAC and the past National Vice President of LULAC for the Midwest Region; Jessica Lara, the Hardin County Auditor; Eitan Hersh, an associate professor of political science at Tufts University; Roxanna Moritz, the president of the Iowa State Association of County Auditors; JB Poersch, president of Majority Forward; Travis Weipert, the Johnson County Auditor; Patrick Gill, the Woodbury County Auditor; and Christopher Bryant, one of the attorneys admitted pro hac vice in this case.

Plaintiffs have advanced four claims relevant to their request for a temporary injunction. They first claim that the challenged portions of HF 2643 burdens the fundamental right to vote guaranteed by Article II, Section 1 of the Iowa Constitution and

voter requesting or casting a ballot pursuant to section 53.22 shall not be required to provide a voter verification number.

c. For purposes of this subsection, “voter verification number” means the registered voter's driver's license number or nonoperator's identification card number assigned to the voter by the department of transportation or the registered voter's identification number assigned to the voter by the state commissioner pursuant to section 47.7, subsection 2.

d. If an applicant does not have current access to the applicant's voter verification number, the commissioner shall verify the applicant's identity prior to supplying the voter verification number by asking the applicant to provide at least two of the following facts about the applicant:

- (1) Date of birth.
- (2) The last four digits of the applicant's social security number, if applicable.
- (3) Residential address.
- (4) Mailing address.
- (5) Middle name.
- (6) Voter verification number as defined in paragraph “c”.

Iowa Code § 53.2(4) (2019) (effective July 1, 2020).

so their claim must be evaluated using strict scrutiny. Strict scrutiny also applies, they argue, because HF 2643 burdens the right to vote guaranteed by free speech and equal protection. Plaintiff claim there is no adequate state interest to justify the burdens created by HF 2643. In support of their claim that HF 2643 burdens the right to vote, Plaintiffs point to the following from their declarations:

- The voter verification number confuses many voters, in particular those who do not have either an Iowa driver's license or non-operator identification card. This confusion can result in voter's either not providing the required information or doing so incorrectly. For example, in Woodbury County 6.5% of the absentee ballot forms submitted in the June primary election were missing a voter verification number, despite the Woodbury County Auditor providing the number with the absentee ballot request forms. This problem may worsen as more inexperienced, younger voters request absentee ballots
- Prior to the passage of HF 2643, county auditors were permitted to, and easily did, fill in missing information on absentee ballot request forms using the available I-Voter database. HF 2643 now prohibits them from doing so and requires that they contact the voter to obtain the information. However, often it is only from the auditor that a voter can obtain his or her voter verification number. At least one voter, who filed a declaration for Plaintiffs, had difficulties and delays obtaining her voter verification number from her county auditor.

- In the 2016 general election, 41.8% of the absentee ballots (520,386 people) were requested in the last ten days before the cutoff. This number is expected to increase because of the COVID-19 pandemic to possibly record shattering levels. This increase, along with mail delays attributable to the U.S. Postal Service, will likely make it more difficult for county auditors to process absentee ballot request forms.
- This difficulty and resulting delays are compounded the requirement that auditors contact voters regarding the missing information. This may result in voters losing the ability to vote by absentee ballot.
- There is no significant evidence of fraud associated with absentee ballots and, in any event, the requirements of HF 2642 are unlikely to combat fraud.

Defendants do not challenge most of Plaintiffs' declarants' assertions. Instead, they argue that it is not the right to vote at issue, rather Plaintiffs' claims involve a request for absentee ballots, which is not a fundamental right and therefore the portions of HF 2643 are subject to rational basis review. They further argue that HF 2643 is not unduly burdensome, pointing to the following from the decelerations and Iowa law:

- The absentee ballot request form states that a "registered voter MUST provide the following necessary information" followed by an explanation. The form and instructions also inform voters what a voter verification number is and how they can get one if needed.

- The request form also encourages people to provide a phone number or email address in case the auditor needs to confirm any information.
- Iowa Code section 53.2(1)(b) allows voters to request absentee ballots up to 120 prior to an election.

Defendants argue that requiring a voter to provide basic identification information to request an absentee ballot fits comfortably with the legitimate interests of the State, and the minimal burden in providing the information required, including the voter verification number, makes requesting an absentee ballot on behalf of someone else more difficult.

The Plaintiffs next claim that HF 2643 violates the Iowa Constitution's equal protection guarantee because it causes arbitrary and disparate treatment of similarly situated Iowans. In support, they point to their declarations for the proposition that the voters in less populated counties will be adversely impacted because of lack of funds and labor to deal with the issues they previously noted with respect to absentee ballots. They also note that larger counties have already taken steps to try and address the issues with absentee ballot requests. Again, the Defendants do not take issue with these factual assertions. Rather they essentially argue that the facts, even if true, do not establish an equal protection violation.

Lastly, the Plaintiffs claim that the complained of portions of HF 2643 violate both the procedural and substantive due process guarantees of Article I, Section 9 of the Iowa Constitution.² In support, they contend that the declarations additionally establish

² The Plaintiffs' Petition includes separate counts challenging HF 2643 based on both substantive and procedural due process. In their Memorandum supporting their request for a temporary injunction, they appear to only raise procedural due process. The court has appressed both pled claims below.

that under the old system, where auditors could complete missing information, a typical Iowa voter would have their absentee ballot request fulfilled, received a ballot, and mailed their ballot in within 5 days. Now, the same process take 12 days. In resisting Defendants largely point to same facts relied on in resisting the equal protection claim. They also note that the declarations establish that the delays complained of by Plaintiffs are largely attributable to voters waiting to the last minute.

II. LAW & ANALYSIS

Plaintiffs want a temporary injunction seeking to bar enforcement of the two discussed portions of HF 2643. Iowa Rule of Civil Procedure 1.1502 allows temporary injunctions when:

1.1502(1) When the petition, supported by affidavit, shows the plaintiff is entitled to relief which includes restraining the commission or continuance of some act which would greatly or irreparably injure the plaintiff.

1.1502(2) Where, during the litigation, it appears that a party is doing, procuring or suffering to be done, or threatens or is about to do, an act violating the other party's rights respecting the subject of the action and tending to make the judgment ineffectual.

1.1502(3) In any case especially authorized by statute.

Iowa R. Civ. P. 1.1502. The Iowa Supreme Court has stated that “[a]n injunction is an extraordinary remedy which should be granted with caution and only when clearly required to avoid irreparable damage.” *Sear v. Clayton Cty. Zoning Bd. of Adjustment*, 590 N.W.2d 512, 515 (Iowa 1999).

In order to obtain an injunction, Plaintiffs must establish three things: “(1) an invasion or threatened invasion of a right; (2) that substantial injury or damages will result unless the request for an injunction is granted; and (3) that there is no adequate

legal remedy available.” *Id.* A temporary injunction further requires that Plaintiffs establish “the likelihood or probability of success on the merits of the underlying claim.” *Lewis Invest., Inc. v. City of Iowa City*, 703 N.W.2d 180, 184 (Iowa 2005). The court should also “carefully weigh the relative hardship which would be suffered by the enjoined party upon awarding injunctive relief.” *Sear*, 590 N.W.2d at 515.

The first step in analyzing the majority of Plaintiffs’ constitutional claims is to decide the appropriate standard for review – strict scrutiny or rational basis.³ This decision also largely resolves Plaintiffs’ claims that HF 2643 unduly burdens the right to vote guaranteed by Article II, Section 1 of the Iowa Constitution, and the right to vote guaranteed by Article 1, Sections 6 (free speech) and 7 (equal protection) of the Iowa Constitution. The parties agree that under Iowa law, voting is “a fundamental right for people who meet the constitutional qualifications of an elector and are not disqualified by adjudication of incompetency or conviction of an infamous crime.” *Griffin v. Pate*, 884 N.W.2d 182, 185 (Iowa 2016). Strict scrutiny applies to fundamental rights. *AFSCME Iowa Council 61 v. State*, 928 N.W.2d 21, 40 (Iowa 2019). Applying strict scrutiny, “the statute will survive a constitutional challenge only if it is shown that the statute is narrowly drawn to serve a compelling state interest.” *Id.* (further citations omitted).

³ Plaintiffs take issue with Defendants’ reliance on federal cases in resisting their Iowa-based constitutional. However, the Iowa Supreme Court has held that, while not binding, results reached by the United States Supreme Court in construing the federal constitution are persuasive in construing analogous provisions in the Iowa Constitution. *State v. Olsen*, 293 N.W.2d 216, 219 (Iowa 1980). Further, “[b]ecause the Due Process Clauses of the Iowa and Federal Constitutions are similar, [the Court] often look[s] to federal cases when interpreting the state due process clause.” *City of Sioux City v. Jacobsma*, 862 N.W.2d 335, 340 (Iowa 2015). Lastly, Plaintiffs’ claims are themselves largely supported with citations to federal case law. Considering the relative dearth of voting-related cases based on the Iowa Constitution, the parties’ reliance on federal case law is both understandable and appropriate.

The claims in this case, however, are related to a request for an absentee ballot, which are likely to be found not to involve the right to vote. Federal courts have long held that absentee ballots do not implicate the right to vote. In *McDonald v. Board of Election Com'rs of Chicago*, 394 U.S. 802, 807, 89 S.Ct. 1404, 1408, 22 L.Ed.2d 739 (1969), the United States Supreme Court held, in a case involving the availability of absentee ballots to unsentenced inmates awaiting trial, that it was “not the right to vote that is at stake here but a claimed right to receive absentee ballots.” The *McDonald* Court went on to state “the absentee statutes, which are designed to make voting more available to some groups who cannot easily get to the polls, do not themselves deny appellants the exercise of the franchise. . . .” *Id.*

Citing *McDonald*, the Iowa Supreme Court has also stated that the rational basis test should be applied to a challenge of an absentee ballot statute under the Iowa Constitution. In *Luse v. Wray*, 254 N.W.2d 324 (Iowa 1977), the Plaintiff claimed that Iowa Code section 53.17, dealing with delivery of absentee ballots to patients in hospitals or health care facilities, violated both equal protection and due process under both the Iowa and U.S Constitutions. The Iowa Supreme Court applied *McDonald* in concluding that the constitutional challenges “would appear” to be subject to the rational basis test. *Id.* at 330. This is consistent with Iowa law applying a rational basis test to cases involving constitutional challenges where no fundamental right is involved. See *Hensler v. City of Davenport*, 790 N.W.2d 569, 580 (Iowa 2010) (“Alternatively, if a fundamental right is not implicated, the statute need only survive the rational-basis test.”) Thus, under both federal and Iowa precedent, the rational basis test is likely to

apply to the court's review of many of Plaintiffs' constitutional claims as it is not the right to vote that is burdened.

The rational basis test was described by the Iowa Supreme Court in *King v. State*, as follows:

The rational basis test is a "deferential standard." *Ames Rental Prop. Ass'n*, 736 N.W.2d at 259. Under this test, we must determine whether the classification is "rationally related to a legitimate governmental interest." *Id.* The classification is valid "unless the relationship between the classification and the purpose behind it is so weak the classification must be viewed as arbitrary or capricious." *Id.* The government is not required or expected to produce evidence to justify its action. *Id.* To the contrary, the plaintiff "must negate every reasonable basis upon which the classification may be sustained." *Bierkamp v. Rogers*, 293 N.W.2d 577, 579–80 (Iowa 1980); see also *State v. Willard*, 756 N.W.2d 207, 213 (Iowa 2008); *Ames Rental Prop. Ass'n*, 736 N.W.2d at 259.

King v. State, 818 N.W.2d 1, 27–28 (Iowa 2012). When applying the rational basis test, the court "defers to the legislature's prerogative to make policy decisions by requiring only a plausible policy justification, mere rationality of the facts underlying the decision and, again, a merely rational relationship between the classification and the policy justification." *Varnum v. Brien*, 763 N.W.2d 862, 879 (Iowa 2009).

Applying the rational basis test, the court concludes that Plaintiffs are not likely to succeed on the merits of their constitutional claims. The first step of a rational basis test "is to determine whether the law serves a legitimate governmental interest." *Hensler*, 790 N.W.2d at 584. The State clearly has a legitimate interest in maintaining the integrity of the election process. See *Crawford v. Marion Cty. Election Bd.*, 553 U.S. 181, 196, 128 S. Ct. 1610, 1619, 170 L. Ed. 2d 574 (2008) ("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.”) (citing *Libertarian Party of Illinois v. Scholz*, 872 F.3d 518, 523-24 (7th Cir. 2017)). “Nondiscriminatory restrictions that impose only slight burdens are generally justified by the need for orderly and fair elections. . . .” *Acevedo v. Cook County Officers Electoral Board*, 925 F.3d. 944, 948 (7th Cir. 2019) (further citations and internal quotations omitted).

The next step in the rational basis review is determining if the challenged portions of HF 2643 are rationally related to the State’s legitimate interest. *See Hensler*, 790 N.W.2d at 584. Properly identifying absentee ballot requests and requiring a voter to provide identification information fits with the interest of the State in maintaining the integrity of the election process. The related requirements of Iowa Code section 53.2, such as providing a voter verification number, are not being challenged as part of this action.⁴ The prohibitions in HF 2643 against county auditors completing missing information without contacting a voter are not likely to be found to be unrelated to the integrity of the election process or to be overly burdensome. Allowing an auditor to

⁴ Plaintiff LULAC challenged Iowa’s voter verification requirement previously and lost following an evidentiary hearing. It is very difficult to separate the unchallenged requirement that a voter provide a voter verification number from the challenged prohibition on an auditor completing the number when missing. Also, in the earlier LULAC case, the District Court found that there is a greater likelihood of fraud associated with absentee ballots than with in-person voting. *See League of United Latin American Citizens of Iowa v. Iowa Secretary of State Paul Pate*, No. CVCV056403, 2019 WL 6358335, at *15 (Iowa Dist. Sep. 30, 2019) (stating that “trial testimony revealed that that mail-in absentee voter fraud is more prevalent in Iowa than impersonation at the polls”).

obtain and complete the missing absentee ballot request information arguably renders the unchallenged requirement that a voter provide the information meaningless.⁵

The rational basis test also applies to Plaintiffs' claim that HF 2643 violates the Iowa Constitution's equal protection guarantee, because it causes arbitrary and disparate treatment of similarly situated Iowans, and application of the test dictates a similar result. With respect to the Equal Protection Clause generally and the application of the rational basis test, the Iowa Supreme Court has held:

Essentially, "[t]he Equal Protection Clause requires that similarly-situated persons be treated alike." *Bowers v. Polk Cnty. Bd. of Supervisors*, 638 N.W.2d 682, 689 (Iowa 2002). Therefore, there is a threshold determination in all equal protection challenges as to whether persons are similarly situated. "If people are not similarly situated, their dissimilar treatment does not violate equal protection." *Id.* (quoting *In re Morrow*, 616 N.W.2d 544, 547 (Iowa 2000)).

Once it is determined persons are similarly situated, we apply one of three different levels of scrutiny depending on the type of legislative classification under attack. *Sherman v. Pella Corp.*, 576 N.W.2d 312, 317 (Iowa 1998). We apply strict scrutiny to "classifications based on race, alienage, or national origin and those affecting fundamental rights." *Varnum*, 763 N.W.2d at 880. We apply intermediate scrutiny to classifications based on gender, illegitimacy, or sexual orientation. *Id.* at 880, 896. Finally, we apply a rational basis analysis to all other classifications. *Id.* at 879.

NextEra Energy Res. LLC v. Iowa Utilities Bd., 815 N.W.2d 30, 45-46 (Iowa 2012). All

eligible Iowa voters similarly situated in that they are all statutorily authorized to request

⁵ Plaintiffs contend that HF 2643 does not advance the goal of election integrity because a person could obtain another's voter identification number using commonly available information. Fraud is theoretically possible with almost any election integrity measure. A statute reviewed under the rational basis test is not unconstitutional "simply because the classification is not made with mathematical nicety or because in practice it results in some inequality." *Ames Rental Prop. Ass'n v. City of Ames*, 736 N.W.2d 255, 260 (Iowa 2007) (further citations and internal quotations omitted.)

an absentee ballot. But here, the classification at issue (other) mandates application of the rational basis test to which the court's earlier analysis applies.

Further, the court is not persuaded that HF 2643 subjects Iowa voters to arbitrary and disparate treatment regarding their absentee ballot request forms. While there may be differences in resources and practices between Iowa's county auditor's offices, those differences do not render HF 2643, which is itself facially neutral, unconstitutional. In rejecting an equal protection claim based on "differential application, either by election officials or by the trial court, of the statutory requirements for absentee ballots," the Minnesota Supreme Court held that the variations between differing jurisdictions, similar to those complained of by Plaintiffs here, were not the result of intentional discrimination as required. *In re Contest of Gen. Election Held on Nov. 4, 2008, for Purpose of Electing a U.S. Senator from State of Minnesota*, 767 N.W.2d 453, 466 (Minn. 2009). The authorities cited and the persuasive reasoning by the Minnesota Supreme Court suggest a similar outcome here.⁶ There is no evidence in the record that would support a finding that the law was intended to treat similarly situated persons differently or that there was discriminatory intent behind HF 2643.

⁶ The Minnesota Supreme Court also rejected the Plaintiff's contention that "the non-uniform application of the statutory standards for absentee voting nevertheless brings this case within the ambit of the United States Supreme Court's decision in *Bush v. Gore*, 531 U.S. 98, 121 S.Ct. 525, 148 L.Ed.2d 388 (2000) (per curiam)." *In re Contest of Gen. Election Held on Nov. 4, 2008*, 767 N.W.2d at 465. In doing so, the Court stated that in *Bush*, the Supreme Court noted it was not addressing the question of "whether local entities, in the exercise of their expertise, may develop different systems for implementing elections" and that *Bush* dealt with a lack of "established standards" and required local officials to involve themselves in "voter intent." *Id.* (citing *Bush*, 531 U.S. at 109, 121 S.Ct. 525). The Plaintiffs cite to *Bush v. Gore* as authority, but for the same reasons noted by the Minnesota Supreme Court, the court finds it largely inapplicable to this case.

Plaintiffs' argument that HF 2643 violates Iowa's due process clause found in Article I, Section 9, of the Iowa Constitution, is also not likely to succeed. First, there is the substantive due process claim, to which the rational basis test again applies and dictates the same result. The Iowa Supreme Court has held:

Substantive due process prevents the government "from engaging in conduct that shocks the conscience or interferes with rights implicit in the concept of ordered liberty." *Zaber v. City of Dubuque*, 789 N.W.2d 634, 640 (Iowa 2010) (quoting *Atwood v. Vilsack*, 725 N.W.2d 641, 647 (Iowa 2006)); *State v. Hernandez-Lopez*, 639 N.W.2d 226, 237 (Iowa 2002). With a substantive due process claim, we follow a two-stage analysis. *Hensler*, 790 N.W.2d at 580. First, we determine the nature of the individual right involved, then the appropriate level of scrutiny. *Id.* If the right at issue is fundamental, strict scrutiny applies; otherwise, the state only has to satisfy the rational basis test. *Sanchez*, 692 N.W.2d at 819–20. When the rational basis test applies, there need only be a "reasonable fit" between the legislature's purpose and the means chosen to advance that purpose. *Zaber*, 789 N.W.2d at 640. We have said that "[t]he doctrine of judicial self-restraint requires us to exercise the utmost care whenever we are asked to break new ground in th[e] field [of substantive due process]." *Sanchez*, 692 N.W.2d at 819 (quoting *Reno v. Flores*, 507 U.S. 292, 302, 113 S.Ct. 1439, 1447, 123 L.Ed.2d 1, 16 (1993)).

King v. State, 818 N.W.2d 1, 31 (Iowa 2012). Again, the claims raised by Plaintiffs do not involve a fundamental right to which strict scrutiny applies. Also again, applying the rational basis test, requiring county auditors to contact voters regarding missing or inaccurate information is likely to be found to be overly burdensome or an unreasonable fit for the legislative purpose advanced.⁷

Lastly, there is Plaintiffs' procedural due process claim. Procedural due process generally requires notice and opportunity to be heard when a person's liberty or

⁷ The statements from various auditors submitted by the Plaintiffs suggest that the requirements of HF 2643 will burden them as far as time and resources needed for compliance. That burden, however, does not necessarily equate to a constitutionally significant burden on the voter.

property interests are at stake. *Lewis v. Jaeger*, 818 N.W.2d 165, 181 (Iowa 2012). The first step is to determine whether a protected interest is at issue. *Bowers v. Polk Cty. Bd. of Supervisors*, 638 N.W.2d 682, 691 (Iowa 2002).⁸ The court will assume an interest here based on the statutory right to obtain an absentee ballot as provided in Iowa Code Chapter 53. See *id.* at 692 (where the Court assumed a right based on the statutes at issue).

If there is a protected interest, the court must balance the following three factors:

First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirements would entail.

Id. at 691 (quoting *Mathews v. Eldridge*, 424 U.S. 319, 335, 96 S.Ct. 893, 903, 47 L.Ed.2d 18, 33 (1976)). Doing so is likely to lead to the conclusion that HF 2642 does not violate procedural due process. Any existing right here is purely statutory since no fundamental right is implicated and the State's legitimate interest has been previously established. There are also safeguards in place to ensure that a voter's interest in an absentee ballot are protected. There is a 120-day window in Iowa for requesting an absentee ballot, and each request includes instructions for the voter to fill out the ballot. There is space on the request form to include contact information for county auditors to reach the voter if there is missing information. Even if the absentee ballot request form

⁸ Like the plaintiff in *Bowers*, Plaintiffs have not made a "procedural due process claim in the traditional mode of denial of notice and opportunity to be heard." *Bowers*, 638 N.W.2d at 691. Instead, Plaintiffs' "attack rests solely on the constitutional legitimacy of the procedure itself." *Id.*

is not returned properly, a voter can vote on Election Day at his or her polling place. While there may be better processes for protecting the State's interest in election integrity than those provided for by HF 2643, "[n]o particular procedure violates due process merely because another method may seem fairer or wiser." *Id.*

III. CONCLUSION

Because the Plaintiffs are not likely to succeed on the merits of their claims, their request for temporary injunction is denied.⁹ In denying the requested injunction, the court acknowledges that HF 2643 reflects policy decisions with which many may disagree. Contrary to what often appears to be the prevailing wisdom, the court is not free to invalidate a law based on its, or public, opinion about the relative merits of the law. Absent a constitutional defect, the court is prohibited from second-guessing when "the legislature [makes] a policy decision - right or wrong" *Exira Cmty. Sch. Dist. v. State*, 512 N.W.2d 787, 795 (Iowa 1994).

It is also clear, from the parties involved and the fact that HF 2643 was enacted on a party-line vote, that this matter is heavily ingrained with politics. Perhaps legislation passed with bipartisan support enjoys greater public confidence and support, but, even if so, that does not impact the court's review. A law is a law, subject to the same standard of review by the court, regardless of the political makeup of the legislators who supported the law or the parties lining up for or against in legal challenges after the law passes.

⁹ Because the court has found this factor determinative, the court has not addressed the other factors for obtaining a temporary injunction.

For the reasons stated, **IT IS ORDERED** that Plaintiffs' Motion for Temporary Injunctive Relief is **DENIED**.

Clerk to notify.



State of Iowa Courts

Type: OTHER ORDER

Case Number CVCV081901
Case Title LULAC & MAJORITY FORWARD VS IOWA SEC OF STATE
PAUL PATE

So Ordered

A handwritten signature in blue ink that reads "Lars G. Anderson".

Lars Anderson, District Court Judge,
Sixth Judicial District of Iowa