

IN DISTRICT COURT COUNTY OF BURLEIGH STATE OF NORTH
DAKOTA

Roland Riemers & Charles Tuttle) Civil Case 8-2020-CV- 1884
 Contestants) C O M P L A I N T
 vs.) And
Secretary of State Alvin Jaeger, Governor) DEMAND FOR PUBLIC COURT
TRIAL
Doug Burgum, & the State of North Dakota) DEMAND FOR EXPEDITED TRIAL

 Contestees) DEMAND FOR JURY TRIAL

That Roland C Riemers (here-in-after just Riemers), and co-Contestant Charles Tuttle (here-in-after just Tuttle), are both American citizens; citizens of the state of North Dakota; and are both defeated statewide candidates in the North Dakota 9 June 2020 statewide primary election, and therefore both have standing to make this lawsuit as allowed under NDCC 16.1-16-02. This lawsuit is brought in Contestees county of residence per NDCC 16.1-16-04.

On the 15 of June the Contestants emailed a letter to the Secretary of State requesting a review of the Primary Election. On the 19 of June Contestants received a response that the SOS had referred the matter to the AG. As the Contestants window to file a law suit is severely limited, and these issues need to quickly resolved before the November general election, Contestants had no choice but to now exercise their legal rights under NDCC 16.1-16-02 instead of waiting for an eventual AG opinion which may come weeks or months from now. Under that statute the Contestants ask this Court to annul the election “for errors or malfeasance of any election official. (NDCC16.1-16-08((5)(b))), against all candidates appearing on the Primary Ballot. Contestants have that right under NDCC 16.1-16-02. “A defeated candidate or ten qualified electors may contest the nomination election of any person. . .” To hold a new election or not is up to the Secretary of State to decide.

This lawsuit is to contest the 9 June 2020 statewide primary election as allowed under NDCC 16.1-16-05(2) due to illegal acts of the Contestees which resulted in erroneous or fraudulent voting, count and/or canvass in that various voters were prevented from voting or their votes were not counted in violation of both federal and state election laws. And for errors and malfeasance of various election officials during the election. The Contestants therefore ask that the 9 June 2020 election be annulled and that the Contestants be awarded costs as allowed under NDCC 16.1-16-085)(b). The Contestants also ask that this court issue a temporary restraining order against the Contestees to prevent them from printing ballots for the November election until this case is resolved by the courts.

I. GOVERNOR’S EMERGENCY ORDERS ILLEGAL?

The difficulties with this year’s primary election was a result of the so-called Coronavirus Pandemic which led eventually to Governor Doug Burgum (here-in-after just Burgum) issuing Public Health Emergency Executive Order 2020-03 on 15 March 2020 when there was just one Coronavirus case in North Dakota, followed by many

more Executive Orders of which several attempted to micro-manage the 9 June 2020 North Dakota Primary Election. At the time of the declaration there was exactly ONE Coronavirus case in North Dakota, and ZERO deaths. There are now 3,080 positive cases in North Dakota with 74 Deaths. During the time of this election, we have moved from high risk with one case to low risk with 3,080 cases? Interestingly, at the same time South Dakota, which has a similar demographics and 120,000 more people, never had the statewide restrictions North Dakota had, and has currently had just 75 deaths. Showing that Burgum's Emergency Orders have really saved one life over having no restrictions at all. These facts were known or should have been known by the SOS at the time of the Primary Election. During this election process Burgum violated the clear requirements of NDCC 37-17.1 as well as vastly exceeded his authority.

1. OPEN ENDED TERMINATION? Burgum “. . . must indicate the disaster or emergency, the area or areas threatened, the conditions which have brought it about or which make possible termination of the state of disaster or emergency.” NDCC 37-17.1-05(3) This law is not a suggestion, it is a requirement. None of the governor's Emergency Orders meet this necessary termination requirement. For example, when the number of COVID-19 eventually decreases, do they have to decrease to 1,000, 100, 1 or zero to lift the order? Thus the Governor's orders are clearly premature, are clearly illegal as well as nothing but a useless hysterical approach to COVID-19.

2. ORDERS NOT DISSEMINATED? NDCC 37-17.1-05(3) also requires that the Burgum's orders “. . . must be disseminated promptly by means calculated to bring its contents to the attention of the general public... and filed with the county or city auditor of the jurisdictions affected.” Instead, these orders have been filed only with the Secretary of State and put on the Governor's web site along with just a press conference. He has never filed them with any of our Auditors as required. Nor have any of these orders been publicly posted on government buildings about the state for those who may not watch TV or spend their time on Burgum's web site. When a law states something MUST be done, these means it is MANDATORY. No ifs & butts about it. Burgum's actions do not meet the requirements of the law and thus all his various Emergency Orders are Null and Void, and all government actions taken as a result of these orders are also illegal. Furthermore, the Secretary of State (here-in-after just SOS) knows, or should have known, that these orders were not valid.

3. NO AUTHORITY TO CHANGE ELECTION LAWS? Even if Burgum's Emergency Orders were legal, Burgum would still not have the authority to change state laws. Under 37-17.1-05-6(a) the governor may “Suspend the provisions of any regulatory statute prescribing the procedures for conduct of state business, or the orders, rules, or regulations of any state agency, if strict compliance with the provisions of any statute, order, rule, or regulation would in any way prevent, hinder, or delay necessary action in managing a disaster or emergency.” Our elections are run not only by very strict state laws, but Federal election laws (HAVA) as well as the times, places and manner of holding elections for Senators and Representatives as, “. . . prescribed in each State by the Legislature thereof. . .” by U.S. CONST. art. I, § 4 (“Elections Clause”). None of the Contestees are a “legislature” and thus their actions would be a violation of both federal and state law. Burgum can no more change election laws than he could declare the office of State Auditor no longer existed. And even if Burgum had the power to change state election laws, he certainly had no authority to change the

Federal election laws. Nor does Burgum have any authority under either the state Constitution or state law to to unilaterally write his own election laws. For a more complete discussion of these issues I would refer the court to The North Dakota Legislative Council memorandum of April 2020. (Attachment A) See also Article II, Section 1 of the North Dakota Constitution which requires “. . . The legislative assembly shall provide by law for secrecy in voting, for absentee voting, for administration of elections and for the nomination of candidates.” Our Election laws are NOT regulatory statutes, and thus Burgum has no authority over them. Burgum is not a legislature.

II. N.D. SUPREME COURT EMERGENCY ORDERS ARE ILLEGAL?

The Contestants are being restricted in their ability to Contest the Election by the various Emergency Orders put forth by the North Dakota Supreme Court, and the Contestants ask this court to rule such Supreme Court Emergency Orders are illegal and Null & Void for the below reasons so that the Clerks office will be fully opened for timely filings by the Contestants, and so that this trial can be fully open to the public, and to insure this trial is held as quickly as possible and thus not delay the November 2020 election.

1. ORDER BASED ON INVALID GOVERNOR ORDER? The ND Supreme Court bases the need for their emergency orders first of all on Donald Trumps 13 March national emergency declaration, which flowed from WHO pronouncements. But since then Trump has disputed WHO findings and recommendations and has even pulled out all American funding from WHO. Trump has also not followed CDC findings or guidelines unless they fit his personal beliefs The Court then goes on to reference Burgum’s Emergency Order 2020-03 of 13 March as the bases for their Court Emergency Order. But as indicated above, Governor Burgum’s Emergency Order was not valid, so any action flowing from that illegal Order must also be considered baseless and null and void.

2. ORDER NOT NEEDED? In their Order, the State Supreme Court first declares “The pandemic poses a threat to individuals who come into contact with a court or judicial facility and personnel” Order 25(3). Followed by “This order is entered in an effort to slow the spread of COVID-19 and minimize the health risks for those who visit or work in courts.” Id. But at the same time the courts have slammed their doors shut, most citizens are free to go to various shopping centers without undo fear of Coronavirus. So the Court obviously is going to very extreme measures to mostly just protect the court staff, and not the public. As for the public, most of their contact with court personnel is behind glass partitions or setting in court rooms some distance from court staff, so social distances are the norm in the courts even in non-pandemic days.

3. COURT EXCEEDED ITS AUTHORITY? The Court declares a Judicial Emergency based on their authority under NDCC 27-02-27. This law allows the Court to do certain administrative things such as “. . . grant relief from deadlines, time schedules, statutes of limitations, statutes of repose or filing requirements imposed by law.” So the Court has no Emergency powers to close courts or suspend jury trials or stop eviction processes, etc. etc.

4. WRONG RULE CITED? What is really interesting is in their Court Emergency Order they repeatedly state that “Rule 57 of the North Dakota Administrative Rules governs a Supreme Court declaration of a judicial emergency.” Order 25 (4) BUT,

that is not what Rule 57 states? Rule 57 of the North Dakota Administrative Rules, But this Rule is for "Pardon Advisory Board." So the Court has cited the wrong rule for their authority. What they should have cited was the North Dakota Supreme Court Administrative Rules, Rule 57. As the Court has cited the wrong set of Administrative Rules for their authority, their orders have to be considered Null and Void.

5. NO AUTHORITY TO CLOSE COURTS? Under N.D. Constitution Art. 1, Section 9. "All courts shall be open, and every man for any injury done him in his lands, goods, person or reputation shall have remedy by due process of law, and right and justice administered without sale, denial or delay. . ." And under NDCC 27-01-02. Sittings of courts public - When public may be excluded. The sittings of every court of this state must be public, and every citizen may freely attend the same . . ." (Emphasis added) Thus by both State Constitution and state statute the ND Supreme Court (nor the District courts) do not have the power to deliberately delay or close the courts. Furthermore, under Section 5 of this Court Rule, "If the emergency or natural disaster makes access to the office of a clerk of court or a courthouse impossible or impractical, the order declaring the judicial emergency may designate another facility, which is reasonably accessible and appropriate, for the business of the court." So if we can not get into a court house because say the county closes the court house, than it is up to the courts to find an alternative venue for the Clerks and for the Courts. I suppose that could be in a nearby shopping mall or restaurant?

III. THE PRIMARY ELECTION WAS SEVERELY FLAWED?

1. UN-RECEIVED BALLOTS? The North Dakota Primary Election was held 9 June 2020. 158,824 votes were cast. It was reported that between 41,000? ballots went out but were never returned, being lost in the mail; sent to the wrong address; or they planned to drop it off at the Auditor's office on election day but discovered the Auditor's office was locked down and the drop box was no where in plain sight; or for some other unknown reason? It is hard to believe that voters would go through the bother of getting a ballot but then would not bother to send the ballot in?

2. CROSS OVER VOTES? Right after the election, the number of cross-over votes and non-partisan votes was announced, but these numbers are no longer listed anyplace on the SOS website. But based on the percentages that use to be public, 10,659 +/- ballots did not vote for any partisan candidates. Why? It could be the voter just was not interested in the partisan candidates or it could be the voter just did not mark the ballot correctly? There was also another 12,706 +/- ballots were the votes were tossed out for cross-over voting where the voter voted for candidates for more than one political party. Riemers has noticed this has been a serious problem in past elections as well, even though NDCC 16.1-05-09 and federal HAVA law REQUIRE that voters be given a chance to correct their ballots if cases of cross-over voting. Obviously this could not be done with a totally mail-in election, and thus the total mail-in election violated this second chance requirement. Ballots were also required to be post marked by the 8th of June, or put into the secluded drop box by 4 p.m. on the 9th of June. While this is the state requirement for absentee voting, but there are no such requirements for "mail-in voting." But is a required "mail-in" ballot the same as a required "absentee ballot"? Contestants take the position that it is not the same. That "mail-in" ballots should have been accepted up to the 9th of June and ballots dropped into the hidden drop box should have been accepted up to 7 p.m., (the normal poll

closing time for balloting). One ballot in Grand Forks that was turned in at 4:20 p.m. on 9 June but was not counted because it missed the 4 p.m. deadline. Contestants take the position the ballots cast between 4 to 7 p.m. should have been counted.

3. LACK OF ELECTION OBSERVERS? NDCC 16.1-05-09 states: "Election observers must be allowed uniform nondiscriminatory access to all stages of the election process, including the certification of election technologies, early voting, absentee voting . . ." There is a similar must observer requirement under NDCC 16.1-07-12.1(c & d)) Whenever the law states MUST, it means it has to be followed. In this election, neither Contestants or any of the other candidates they know about, were notified of the certification of election technologies. And while a number of other candidates attempted to have election observers at the polls, this was REFUSED by almost all the Auditors. Riemers was the only one allowed to do any poll watching, that being in Grand Forks County. But even there, on election day he was restricted to the "Media Area" which was a great distance from the verification of signatures tables in the Alerus Center. And while this whole process was done out of fear of spreading COVID-19, Riemers also observed that of the large number of people in the Alerus verification room, that only the 2 news reporters in the Media Area wore the county required masks. The ballots were also being opened in the County Building and then transported to the Alerus Center for signature verification. Riemers was not able to observe the opening of the ballot outer envelopes. The tabulations were also done on computers in the Alerus Center which while they were fairly close to the Media Area, there was no way Riemers could observe what was happening on the screens of the computers. Virus or no virus, allowing observers is needed to insure we continue to have honest elections. Otherwise how can the public really be sure the ballots are being honestly opened and honestly counted in all the counties? If need be, auditors could have required masks or even complete protective gear by observers. For those counties that excluded observers, that would appear not only to be a violation of our election laws, but a criminal violation as well under NDCC 16.1-07-14.. It is Contestants position that wide spread refusal to allow reasonable observation by poll watchers casts doubt on the whole election?

4. NO BALLOTS RECEIVED? "It is the policy of this state to encourage voting by all eligible voters at all statewide special, primary or general elections. NDCC 16.1-01-02.1 As well as the 14.7% irregular votes, a common complaint heard by the Contestants from many citizens was "I sent in my ballot request but never received a ballot." Followed by, "I did not realize there would not be a polling place I could cast a vote on election day." From the number of complaints Contestants and other candidates have received, it is obvious we have excluded large numbers of people from voting in the Primary and thus depriving the citizens of North Dakota the opportunity to cast their ballots. Add to this unknown number the 41,000? ballots that were sent out but never returned for some reason? The Contestants believe this represents a significant number North Dakotans and it casts doubt on our Primary Election process?.

5. POLLS CLOSED AT 4 P.M.? Under NDCC 16.1-01-03. polls are required to be open until 7 p.m. but absentee ballots must be in by 4 p.m. to the (closed) County Auditor's Office? In the normal course of events, if a voter missed the 4 p.m. deadline, he could still go to a polling place to cast his vote. But, because no physical polls were open, voters were denied the right to vote if they weren't able to find the hidden ballot

box and cast their vote by 4 p.m. Thus, the closing of all physical polling places (Which were required to be open per 16.1-04-02 & 16.1-11.1-01) denied some citizens of their right to vote in this election. The problem here is that Burgum had somehow decided that mail-in ballots were the same as absentee ballots. But that is really not the case. Absentee ballots are obtained because for some reason the voter can not or does not want to go to the polls on election day. Mail-in ballots just take the place of the physical voting in the polling place. The Contestants therefore take the position that cutting off voting at 4 p.m. was a violation of NDCC 16.1-04-02 & 16.1-11.1-01 and thus denied an unknown number of citizens their right to vote.

6. GOVERNOR'S EMERGENCY ORDER 2020-13(2)?

- a. The requirement under NDCC 15.1-11.1-01(1), that each county identify one polling location to be open on election day is hereby suspended.
- b. The requirement under NDCC 16.1-04-02, that each county establish polling places no later than the 64th day before the election is hereby suspended.
- c. The requirement under NDCC 16.1-07-12 that requires county election boards to open and process mail ballots on the day before and the day of the election is hereby suspended, to allow county election boards to open and process mail ballots no earlier than the fifth business day before the election. Tabulation of the processed ballots may not be done until 7 p.m. on election day.

Burgum has no Constitutional or statutory authority under (NDCC 37-17.1-05-6(a)) to change statutory law, Thus a to c would be Null and Void. And even if Burgum had that authority, he did not follow the clear requirements for making an Emergency Order, so a to c would also be Null and Void. It is also the Contestants position it is the Constitutional and statutory duty of the Secretary of State to run our elections without micro managing from the Governor. Contestants would also refer the Court to the North Dakota Legislative Council April 2020 Memorandum (attachment A) that does a very in depth review of this very question.

IV. CONCLUSIONS

There have been enough irregularities and violations of election laws and illegal abuse of executive power, that it should be promptly annulled. It is obvious that this election must be promptly annulled. That the election process be completely investigated by the SOS to punish those from the governor on down who may have violated state or federal election laws. And that the November election be run by the SOS per our state and federal election laws and not by Governor Burgum's flawed emergency orders.

Contestants also ask:

1. That Governor's various Emergency Orders do not meet the requirements of the law and therefore should be ruled Null and Void.
2. That the Supreme Courts various Emergency Orders restricting access to the courts do not meet the requirements of the law or their own Administrative Rules and therefore are all Null and Void.
3. That 9 June Primary election deprived large numbers of citizens of their right to vote and that the election should be annulled and either rescheduled at the quickest possible date, or that all candidates be passed onto the November ballot.
4. Any other remedies that justice and the law allows as a remedy for the Contestants and the voters of North Dakota.

By, _____ By:

Roland Riemers, Contestant

Charles Tuttle, Contestant

The above Contestants I have personally identified, and have subscribed and sworn

before me this _____ day of June 2020, under the penalty of perjury, that the statements in the complaint are true and correct to the best of their knowledge and belief.
