

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

LEAGUE OF UNITED LATIN
AMERICAN CITIZENS OF IOWA; and
TAYLOR BLAIR,

Petitioners,

v.

IOWA SECRETARY OF STATE
PAUL PATE, in his official capacity,

Respondent.

**PETITION IN LAW AND EQUITY
AND FOR JUDICIAL REVIEW OF
AGENCY ACTION**

Case No. _____

COME NOW Petitioners League of United Latin American Citizens of Iowa and Taylor Blair praying for temporary and permanent injunctive relief restraining Respondent Iowa Secretary of State Paul Pate (the “Secretary”) from enforcing certain provisions of House File 516 (“HF 516”) and its implementing regulations, as well as a declaratory judgment that (1) HF 516 violates the Iowa Constitution, and (2) HF 516’s implementing regulations violate the Iowa Constitution and the Iowa Administrative Procedure Act, and other relief described below, and in support thereof state the following:

STATEMENT OF THE CASE

1. Plaintiffs bring this suit to challenge several new elections laws, contained in HF 516 and certain of its implementing regulations, that will make voting in Iowa more complicated, cumbersome, and time-consuming, without adequate justification for doing so, burdening the right to vote of significant numbers of Iowans who are lawfully eligible to vote, in some cases to the point of complete disenfranchisement.

2. Specifically, Plaintiffs challenge HF 516's provisions and implementing regulations that: (a) impose arbitrary and unjustified restrictions on the popular and widespread practice of absentee voting and absentee in-person voting, including mandating the rejection of absentee ballot applications received prior to 120 days before the election (HF 516 § 6), cutting back the absentee voting period (§ 51), requiring the voter to provide an unnecessary and often obscure voter verification number on an absentee ballot application (§ 6), and introducing an inherently unreliable, unnecessary, and standardless process that allows local officials and poll-workers to disenfranchise eligible voters based on variations in handwriting (§§ 30, 31); (b) introduce unnecessary and burdensome voter ID requirements for in-person voters (§§ 12–36), as well as the misleading advertisements and other voter-oriented communications promulgated by the Secretary's office about the new voter identification requirements; and (c) unjustifiably eliminate the option of straight-party voting (§ 46) (collectively, the "challenged provisions").

3. None of the challenged provisions are necessary to safeguard elections in Iowa, which has a long and proud history of fair and open elections. In fact, in 2016, the Electoral Integrity Project, an independent academic project based at Harvard and Sydney Universities, scored Iowa as one of the top five states in its Perceptions of Electoral Integrity Index. It is therefore unsurprising that the Secretary defended Iowa's record in October 2016 against unsubstantiated charges of voter fraud made by then-Republican presidential nominee Donald Trump by saying: "Iowa is one of the best states in the nation for both voter participation and voter integrity." After the 2016 election, when asked about President Trump's "claim of 3 to 5 million people voting illegally," Secretary Pate responded: "I certainly don't see it in Iowa."

4. Consistent with Secretary Pate's public statements, voter fraud in Iowa is practically non-existent. Indeed, despite Iowa's investment of substantial resources to investigate

any possible election misconduct, there have been exceedingly few confirmed cases of improperly cast ballots in the state, let alone the types of voter impersonation that the absentee ballot verification and voter ID requirements of HF 516 purport to address. These results are consistent with numerous comprehensive nationwide studies that have found that voter fraud—particularly of the type ostensibly targeted by these provisions of HF 516—is exceptionally rare.

5. Iowa’s efforts to restrict access to voting have coincided with a substantial shift in partisan control of Iowa’s government, with 2016 marking the first time since 1998 that Republicans have held the governorship and majorities in both houses of the General Assembly. This consolidation of power has allowed Republican elected officials to enact legislation that had been rejected in 2011 and 2013, when power was shared in the state’s political branches. Indeed, one of the new majority’s first acts when it took control of the legislature was to introduce the myriad voting restrictions contained in HF 516.

6. The legislation will abridge the right to vote and prevent qualified voters from voting in Iowa elections. The challenged provisions were intended to burden, abridge, and deny, and will have the effect of burdening, abridging, and denying, the voting rights of Iowans generally and, in particular, Latinos, African Americans, and other racial, ethnic, and language minorities, elderly people, young people, women, and individuals with disabilities, and voters most likely to support Democratic candidates. The challenged provisions violate Article II, Section 1, and Article I, Sections 6, 7, and 9 of the Iowa Constitution and the Iowa Administrative Procedure Act. They should accordingly be declared illegal and enjoined.

JURISDICTION AND VENUE

7. This Court has jurisdiction under Iowa Code §§ 17A.19(2), 602.6101. Petitioners have no adequate administrative remedy that has not been exhausted.

8. Venue in Polk County is proper under Iowa Code § 616.3(2), because the cause or some part thereof arose in the county, and Iowa Code § 17A.19(2).

PARTIES

9. Petitioner League of United Latin American Citizens (“LULAC”) of Iowa has its business address at 2463 E. Highview Dr., Des Moines, Iowa, 50320. LULAC has approximately 150,000 members throughout the United States and Puerto Rico, and more than 600 members in Iowa. It is the largest and oldest Latino civil rights organization in the United States. LULAC advances 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. LULAC of Iowa is comprised of 18 Councils located throughout the State of Iowa. The members and constituents of LULAC of Iowa and each of its councils include voting-age Latino citizens of Iowa who are more likely than other members of the electorate to be burdened—and in some instances prevented entirely from casting a ballot that will be counted in Iowa’s elections—by the challenged provisions. LULAC of Iowa must also divert substantial resources and attention from other critical missions to deal with the adverse impacts the challenged provisions will have on its members and constituents, and to assist them in attempting to surmount the barriers to voting imposed by the challenged provisions. Because of the challenged provisions, LULAC of Iowa has suffered and will continue to suffer irreparable harm. Unless enjoined, the State’s enforcement of these requirements will inflict injuries for which LULAC of Iowa has no adequate remedy at law.

10. Petitioner Taylor Blair resides at 321 S 5th St., Unit 202, Ames, Iowa, and is registered to vote in Story County at that address. He is a student at Iowa State University and serves as Vice President of the College and Young Democrats of Iowa. Blair has never been

issued an Iowa driver's license or an Iowa nonoperator's identification. Blair has an Iowa State University identification card, but that card does not have an expiration date, and therefore is not a valid voter identification under HF 516's new voter identification provisions. Although Blair was registered to vote and did not have an Iowa driver's license or an Iowa nonoperator's identification at the time HF 516 went into effect, he did not receive a voter identification card by mail in December 2017 as required by Section 18(1) of HF 516 and promised by the Secretary. Blair inquired about the missing voter identification card with the office of the Story County auditor, which determined that the Secretary's office erroneously matched Blair's voter registration with a different individual who *had* been issued an Iowa driver's license or an Iowa nonoperator's identification and, as a result, the Secretary did not issue Blair a voter identification card. The Story County auditor subsequently issued Blair a voter identification card. Blair forgot to bring that card when he went to his polling place to vote in the April 3, 2018 election. He was permitted to vote only after executing an affidavit of identity. In past election cycles, Blair has assisted people in registering to vote, participated in efforts to encourage voting, and provided election-related information to other Iowa voters, including information about HF 516. He plans and intends to continue to do so in connection with the 2018 elections. The challenged provisions burden and abridge Blair's right to vote, divert and burden his efforts to assist and encourage citizens to register and to vote, and divert and burden his efforts to campaign for candidates of his choice. Because of the challenged provisions, Blair has suffered and will continue to suffer irreparable harm. Unless enjoined, the State's enforcement of the challenged provisions will inflict injuries for which Blair has no adequate remedy at law.

11. Defendant Paul Pate is the Iowa Secretary of State and is named as a Defendant in his official capacity. He is the chief election official, the state commissioner of elections, and the

state registrar of voters of Iowa and, as such, is responsible for the administration of elections. *See* Iowa Code §§ 47.1(1)-(3), 47.7(1). His responsibilities include, but are not limited to, setting forth “uniform election practices and procedures” and supervising local election officials regarding the proper methods of conducting elections. Iowa Code § 47.1(1)-(3).

FACTUAL ALLEGATIONS

I. The Partisan Process to Adopt HF 516

12. HF 516 is the culmination of the efforts of Republican officeholders to undermine the right to vote and make voting more burdensome for partisan advantage, especially methods of voting disproportionately used by Democratic voters and Latinos, African Americans, and other racial, ethnic, and language minorities, elderly people, young people, women, and individuals with disabilities.

13. A wide array of organizations declared their opposition to HF 516 during the legislative debate, including Petitioner LULAC of Iowa, as well as the League of Women Voters of Iowa, Disability Rights Iowa, National Association for the Advancement of Colored People (Iowa-Nebraska), the Iowa Department on Aging/Long Term Ombudsman, AARP Iowa, the Iowa State Education Association, Iowa Developmental Disabilities Council, and the Iowa State Association of County Auditors. The only entity that filed a lobby disclosure in favor of HF 516 was the Iowa Minuteman Civil Defense Corps.

14. HF 516 was adopted on a party-line vote in both houses of the legislature, and signed by Republican Governor Terry Branstad.

15. HF 516 is just one of several actions taken in recent years to attempt to abridge the voting rights of Iowans. One of the first actions by Governor Branstad, taken on his first day in office, was to rescind Executive Order 42, a measure implemented by former Governor Tom

Vilsack to restore the voting rights of persons convicted of a felony or aggravated misdemeanor who had completed their sentences. Under Executive Order 42, voting rights had been restored to an estimated 115,000 citizens.

16. In 2012, then-Secretary of State Matt Schultz implemented a series of regulations to purge Iowa's voting rolls by identifying, challenging, and removing persons suspected of not holding U.S. citizenship. However, in litigation that followed, an Iowa state court found that the list that Secretary Schultz relied on to allege voter fraud contained myriad "inaccuracies" in the form of names of individuals who had "obtained a driver's license while not a citizen and subsequently became citizens and registered to vote." Order on Pet. Mot. for Temp. Inj. Relief, *ACLU v. Schultz*, No. CV009311, at 10 (Polk Cty. Dist. Ct. Sept. 13, 2012). The trial court issued a temporary injunction, ruling that the measures would place a "fairly heavy burden on any allegedly ineligible voter," with the burden having "the potential to fall more heavily on any newly admitted citizens who may not fully understand how to prove their citizenship, and/or on lower income individuals who may not have the time or resources required to refute such claims." *Id.* The State subsequently dismissed its appeal of the lower court's decision, and the challenged regulations never went into effect.

17. Indeed, in justifying attempts to adopt restrictive voter identification measures and to purge Iowa's voter rolls, former Secretary of State Schultz implicitly admitted that the real purpose of these efforts was to further a specific political agenda by making it more difficult for opponents of that agenda to participate in the political process. Enhancing "voter ID and election integrity" was necessary, he said, to advancing "a whole lot of issues that we care about, abortion, gay marriage, a whole lot of social issues that we care about." Obviously, restrictive voting laws do not directly regulate abortion, marriage, or other "social issues." The only logical

interpretation of the statement is that the restrictive voting laws he was promoting would benefit a conservative, Republican agenda by disproportionately burdening and disenfranchising Democratic voters who do not support that agenda.

II. House File 516 Severely Burdens, Abridges, and Denies the Right to Vote

18. HF 516 severely burdens and abridges Iowans' fundamental right to vote. It will prevent significant numbers of Iowans from exercising that right and make it more difficult for Iowans who successfully cast a ballot to do so. It imposes arbitrary and unjustified restrictions on the popular and widespread practice of absentee voting, including in-person absentee voting. It introduces an inherently unreliable process that allows election administrators to disenfranchise absentee voters based on perceived variations in handwriting. It introduces unnecessary and burdensome voter ID requirements for in-person voters and unjustifiably eliminates the option of straight-party voting.

19. Each of the challenged provisions burdens the right to vote directly and by complicating and slowing down elections administration in Iowa. The provisions also operate to chill electoral organizing activity by requiring entities and individuals that engage in electoral and civic activity—including Petitioners LULAC of Iowa and Blair—to devote resources to educating prospective voters about the changes wrought by the legislation that otherwise would have been used for other purposes.

20. The barriers to voting erected by HF 516 disproportionately burden certain voters, including Latinos, African Americans, and other racial, ethnic, and language minorities, elderly people, young people, women, and individuals with disabilities. These groups of voters disproportionately vote for Democratic candidates in Iowa. Moreover, election returns show that

Democratic voters disproportionately vote absentee. In other words, HF 516 creates the greatest burden on voters who are less likely to vote for its proponents.

A. *Restrictions on Absentee Voting*

21. Absentee and in-person absentee voting (also known as “early voting”) is extraordinarily popular among Iowa voters, and has grown in popularity over time. Iowa law does not require voters to provide an excuse to vote absentee; it is an option available to every eligible voter. During the 2000 general election, 21.19% of votes in Iowa were cast by absentee ballot. This figure increased to 30.72% in 2004, 35.70% in 2008, and 43.20% in 2012. Similarly, in the 2016 general election, 41.30% of votes were cast by absentee ballot. *See* Timothy M. Hagle, *Iowa Voting Series, Paper 6: An Examination of Iowa Absentee Voting Since 1988*, at 26 (fig. 2b) (Apr. 2017),

<http://www.profhagle.com/app/download/7246354940/06IAAbsenteeExtended2017.pdf>.

22. In election after election, Democratic voters in Iowa disproportionately vote by absentee ballot. In the 2016 general election, 52.46% of registered Democratic voters who voted did so absentee (including absentee by mail and absentee in-person voting), while only 38.99% of Republican voters cast their ballots that way. Hillary Clinton received 50.78% of her votes by absentee ballot; of Donald Trump’s votes, only 33.82% were cast absentee. In the 2014 general election, 49.67% of registered Democrats who voted did so absentee, versus 39.50% of Republicans. In the 2012 general election, 53.78% of Democratic voters cast absentee votes, versus only 39.64% of Republican voters.

23. Absentee voting in Iowa is also particularly popular among women and voters under 25 years of age and over 64 years of age. In the 2016 general election, 43.88% of women who voted did so absentee, compared to 38.39% of men. In the same election, 35.66% of votes

cast by individuals aged 18–24 were cast by absentee ballot, and 58.08% of votes cast by individuals aged 65 and older were cast by absentee ballot. In contrast, 30.04% and 30.19% of votes cast by individuals aged 25–34 and individuals aged 35–49, respectively, were cast by absentee ballot.

24. Because a disproportionate number of women, older voters, young voters, and Democratic voters cast absentee ballots, this restriction on absentee voting (discussed below) will have a disproportionate negative impact on the rights of these groups of voters.

25. HF 516 makes it more difficult to request and vote an absentee ballot that will be counted. At no point during the legislative debate on HF 516 did the State (including any member of the executive branch or state legislature), provide a justification supported by even a legitimate State interest, let alone a compelling state interest, for restricting access to absentee voting. The only statement in support of the measures limiting absentee voting contended that these restrictions will “shor[e] up voter confidence” by making “fixes to absentee voting and voter registration.” This conclusory statement does not establish why or how limiting absentee voting, a popular practice used by more than 40 percent of Iowa voters, would improve confidence in elections. The statements by Secretary Pate, Deputy Secretary of State Carol Olson, and Republican legislators in support of HF 516 do not provide any justification or support for the limitation on the retention of absentee ballots.

Shortening the Period to Request and Vote an Absentee Ballot

26. Prior to the enactment of HF 516, voters could cast absentee ballots or vote absentee in-person during the 40-day period before the date of any primary election or general election. Iowa Code Ann. §§ 53.10, 53.11 (2016). Applications for absentee ballots could be submitted by registered voters until 5:00 p.m. on the Friday before the election. *Id.* § 53.2(b).

27. HF 516 shortens the period for in-person and mail absentee voting from 40 days preceding a primary or general election to 29 days, eliminating two of the six weekends available for in-person absentee voting. HF 516 § 52; Iowa Code Ann. §§ 53.10, 53.11.

28. For the 2018 primary, the changes that HF 516 have made to the absentee voting calendar means that the absentee period begins *after* the academic year ends at several of Iowa's largest universities, including Iowa State University and University of Northern Iowa.

29. HF 516 also moves the deadline to receive absentee ballot requests from the Friday before election day to ten days before election day. HF 516 § 6; Iowa Code § 53.2(1)(b) (incorporating deadline from Iowa Code § 48A.9).

30. HF 516 makes other unnecessary adjustments to the absentee ballot regime that will confuse and burden voters. Before the enactment of HF 516, county auditors were required to retain applications for absentee ballots submitted before the then 70-day window in which individuals could request absentee ballots.

31. HF 516, however, now *prohibits* election officials from retaining absentee ballot applications received prior to the formal opening of the application period, inexplicably constraining the window for a voter to request an absentee ballot. Because of these changes to the law under HF 516, absentee ballot applications that are received before the formal opening of the application period are now rejected outright. The new "window" in which voters may request absentee ballot applications now opens 120 days before election day and any applications received before then will be returned to the voter. *See* HF 516 § 6; Iowa Code § 53.2(1)(b). Voters who unwittingly send their absentee ballot applications in too early, assuming they learn that their applications have been rejected, will therefore have to submit an entirely new

application to vote absentee. This will create substantial and entirely unjustified burdens on these voters' right to vote.

32. Nevertheless, election officials are required by federal law (52 U.S.C. § 20306) to retain and process early absentee ballot requests received from absent servicemembers. Consequently, the new state law requirement to reject early absentee ballot requests will have the consequence of treating civilian voters and military voters disparately. And far from serving the interests of election administrators, this creates an additional administrative burden for county election officials to treat the two types of applications differently. Thus, this unnecessary hurdle will unjustifiably burden the right to vote of civilians who send their absentee ballot applications too early, while increasing election administration costs.

33. This year, the new 120-day rule requires that any absentee ballot applications submitted prior to July 9 be automatically rejected. This effectively prevents campaigns from canvassing for absentee ballot applications over the July 4 holiday.

Requiring a Voter Verification Number

34. HF 516 also makes requesting an absentee ballot more burdensome by establishing a requirement that a voter provide a specific "voter identification number" to request an absentee ballot. This requirement was adopted despite a lack of evidence that there is a significant number of fraudulent absentee ballot requests in Iowa, or that the requirement would prevent any such fraud.

35. Specifically, HF 516 requires that an absentee ballot application "shall" include the voter's Iowa driver's license or nonoperator identification number, or the four-digit personal identification number provided on the voter identification card ("Voter ID Card") issued by election administrators to registered voters who do not have an Iowa driver's license or

nonoperator's identification. *See* HF 516 § 6; Iowa Code § 53.2(4)(c). However, residents of assisted-living facilities (Iowa Code § 53.22(8)) and unformed and overseas voters (IAC 721—21.320(2)) are exempted from this requirement.

36. Because voters who are racial, ethnic, or language minorities, low-income, young, old, and/or frequent movers are less likely to have an Iowa driver's license or nonoperator's identification, they will be disproportionately issued and reliant upon the Voter ID Card. *See* ¶ 86, *infra*. Moreover, because the Voter ID Card is issued months or years before an election and has no purpose other than voting, it is far more likely to be lost or otherwise unavailable to a voter when he or she wants to apply for an absentee ballot compared to other forms of identification.

37. Iowa Code § 53.2, as amended by HF 516 § 6, provides that in the case of “the absence of a voter verification number” on an absentee ballot application, “the commissioner shall, by the best means available, obtain the additional necessary information.” However, a rule adopted by the Secretary of State on November 8, 2017 (effective December 31, 2017), provides that “[c]ommissioners may not use the voter registration system to obtain the information,” Iowa Administrative Code 721—21.306(53). This rule violates the statutory requirement to use “the best means available” to “obtain” any “additional necessary information.”

38. Instead, the Secretary's rule requires a commissioner to “contact the voter directly by mail, e-mail, or telephone or in person” to “verify the voter's identity by asking the voter to provide at least two of the following facts about the voter: (a) Date of birth; (b) Last four digits of the voter's social security number (if the number is stored within I-Voters); (c) Driver's license or nonoperator's identification card number (if the number is stored within I-Voters); (d) Address; (e) Middle name; and (f) Voter verification number pursuant to Iowa Code section

53.2(4).” Iowa Administrative Code 721—21.306(53). This rule will simultaneously make things more difficult for election administrators and burden voters, especially those who do not have ready access to their Voter ID Card and its obscure four-digit PIN.

39. Despite the requirement for commissioners to issue absentee ballots to those without a voter verification number if other data can be verified (for example, date of birth and address), the application published by the Secretary of State states “ID Number is required. An absentee ballot cannot be issued until ID Number is provided.”

ID NUMBER* Complete one	Iowa Driver's License or Non-Operator ID Number: <input type="text"/>	ID Number is required. An absentee ballot cannot be issued until ID Number is provided.
	OR Four-digit Voter PIN (can be found on Voter Identification Card): <input type="text"/>	
<small>Voters without an Iowa Driver's License or Non-Operator ID number are mailed an Iowa Voter Identification Card at the time of registration.</small>		

This statement will prevent many eligible voters from submitting absentee ballot applications because they don't know their ID number or how to find it, and will be misled by the statement on the application to believe that election officials cannot assist them in verifying their application by another means.

40. The Iowa Code, the Secretary of State's regulations, and the Election Administrator's Handbook do not specify the commissioner's responsibilities if an incorrect voter verification number is provided on an absentee ballot application.

41. The requirement to provide an identification number to request and be issued an absentee ballot will unduly burden and prevent qualified voters from voting by absentee ballot and substantially reduce the number of voters who will cast a ballot. These limitations burden and abridge the right to vote generally and disproportionately burden and abridge the rights of groups of voters who disproportionately use absentee ballots. These limitations on the issuance of absentee ballots will make it more difficult for Iowans to have their absentee ballots counted.

As absentee voting is a popular and widespread practice in Iowa, this change will burden and in some cases completely disenfranchise Iowa voters.

Rejecting Ballots Based on Inherently Unreliable Signature Matching

42. Prior to the enactment of HF 516, county auditors and local poll-workers were not required or even authorized to compare or match voters' signatures as part of the process of verifying identity during in-person voting. *See generally* Iowa Code Ann. §§ 48A, 49, 53, *et seq.* (2016). Similarly, county auditors were not required or authorized by law to compare or match the signatures on absentee applications or absentee affidavits or return envelopes.

43. HF 516 creates new signature verification requirements at two separate steps in the absentee voting process, each of which introduces a substantial risk of eligible voters being disenfranchised as a result.

44. *First*, election commissioners are now authorized to reject applications for absentee ballots "if it appears to the commissioner that the signature on the application has been signed by someone other than the registered voter" based on a comparison between "the signature on the application" and the "signature on record of the registered voter." HF 516 § 30; Iowa Code § 53.2(5).

45. Applications for absentee ballots must be received by the election commissioner ten days before a primary or general election, or postmarked fifteen days before the election. HF 516 § 6; Iowa Code § 53.2(1)(b).

46. Thus, while it is true that, if an application for an absentee ballot is rejected pursuant to signature mismatch, the voter is to be notified and the voter will then be given the opportunity to "submit a new application and signature or update the registered voter's signature on record," Iowa Code § 53.2(5), the realities of the election calendar make this "cure" provision

meaningless for voters whose absentee ballot applications are erroneously rejected due to a perceived signature mismatch during the last several weeks before an election, because of the above-discussed deadlines.

47. And, as history has demonstrated, the number of voters who request absentee ballot applications in the final weeks before the election has been significant. In the 2016 general election, for example, more than 15,000 Iowa voters per day requested absentee ballots in the period from 10 days to 20 days before the election.

48. Moreover, experiences in other states have proven that even when voters are contacted regarding an alleged signature mismatch, the burden of “curing” the purported problems results in a significant number of voters not having their ballots counted. A review of voter behavior in four California counties found that nearly 40% of voters given the opportunity to cure purported defects in their absentee ballots within eight days of the election failed to do so. *See Decl. of Kim D. Alexander in La Follette v. Padilla*, No. CPF137515931 (San Francisco Sup. Ct., filed Jan. 19, 2018). Given that the research has consistently shown that even absentee voter fraud is exceedingly rare, it is simply not possible that all, most, or even a remotely significant number of these ballots were anything other than entirely legitimate ballots cast by eligible voters.

49. *Second*, HF 516 now permits election commissioners to reject absentee ballots that are voted and returned if the affidavit envelope or the return envelope “appears to the commissioner [to have] been signed by someone other than the registered voter,” based on a comparison between “the signature on the envelope” and “the signature on record of the registered voter.” HF 516 § 31; Iowa Code § 53.18(3).

50. If an absentee ballot is rejected because of an envelope signature, the voter is to be “immediately” notified that the ballot will not be counted, so long as the absentee ballot is received by 5:00 p.m. on the Saturday before a general election. HF 516 § 31; Iowa Code § 53.18(2)-(3); Iowa Election Administrator’s Handbook 3-57 (Apr. 2018). There is no requirement that voters whose ballots are received and rejected after that time be notified.

51. In the 2016 general election, more than 60,000 absentee ballots—over nine percent (9%) of all absentee ballots cast—were received the Sunday, Monday, or Tuesday (election day) following that deadline.

52. Accordingly, if even a small percentage of absentee ballots are erroneously rejected due to purported signature mismatches after the Saturday review deadline, many voters will be disenfranchised without an opportunity to cure the alleged defect.

53. Even if a voter is successfully notified of a signature mismatch and then requests a replacement ballot, for the voter to have an absentee ballot counted, he or she still must receive the replacement ballot and return it “before the polls close on election day or be clearly postmarked . . . not later than the day before the election and received by the commissioner not later than noon on the Monday following the election.” Iowa Code § 53.17(2). In many instances, receiving and returning an absentee ballot within that timeframe would be impossible, and there is no action a voter can take between the close of polls and the canvass of votes to ensure his or her ballot bearing an allegedly mismatched signature will be counted.

54. Although verifying signatures may seem unremarkable, there is good reason not to permit it to be conducted when fundamental rights are at stake. Studies have consistently shown that signature verification by non-experts is inherently unreliable. In fact, in this context in particular, it is worse than random: non-experts’ signature verification errors are strongly

biased toward erroneously identifying true signatures as forgeries (as opposed to mistaking forgeries for true signatures).

55. Experts in the field of handwriting analysis consistently find that laypersons erroneously identify a large number of “false-positives.” In one study, laypersons erroneously declared authentic signatures to be non-genuine in 26.1 percent of cases, meaning they found authentic signatures to be inauthentic or false at least 26 percent of the time, despite having access to six authentic reference signatures for comparison. K. Gummadidala, *Signature authentication by forensic document examiners*, J. Forensic Sci., 46(4) 884–88 (2001).

56. There are many reasons why signature matching is particularly difficult to do accurately, including by experts. Handwriting (and likewise a signature) is affected by physical factors such as age, illness, injury, medicine, eyesight, alcohol, and drugs; mechanical factors such as pen type, ink, surface, position, and paper quality; and psychological factors such as distress, anger, depression, happiness, and nervousness. Richard Orsini, *Signature Evaluation*, Fla. State Ass’n of Supervisors of Elections 2015 Annual Summer Conference (June 7-10, 2016).

57. Circumstances such as a person’s body position when signing, writing surface and material, the physical and psychological state of the person, and environmental factors, such as noise and luminance, all affect a person’s signature. See Tomislav Fotak, et al., *Handwritten signature identification using basic concepts of graph theory*, 7 WSEAS Transactions on Signal Processing 145 (2011).

58. Signatures also can vary significantly over time and those who are poorly educated or for whom English is a second language tend to exhibit an especially wide range of variation in their signatures.

59. Because of all of these factors, it is not surprising that, when states have authorized local officials to verify voter identity using signatures, the result has been that some local officials reject more signatures as “mismatches” than others. This uneven application (which is virtually inevitable, due to both the quality controls that reasonable signature matching requires, including a significant number of known reference signatures, which local election officials are almost always going to lack) means that a voter’s chance of having their right to vote burdened or denied as a result of an inaccurate signature match will vary widely depending on nothing more than the county in which they reside, and the stringency by which their local election officials attempt to apply the signature matching requirement.

60. For example, in the 2012 general election in Florida, a state in which county canvassing boards review signatures on absentee ballot affidavits, Seminole and Alachua counties were *ten times* more likely than Sarasota, Hillsborough, and Leon counties to reject a vote-by-mail ballot as invalid due to a signature mismatch. *See* Memo. of Law in Support of Emergency Mot. for Prelim. Inj., *Fla. Democratic Party v. Detzner*, No. 4:16-cv-00607 (N.D. Fla. Oct. 3, 2016) at 9 (citing Expert Report of Dr. Daniel A. Smith).

61. Across the eleven Florida counties studied for the impacts of signature matching, Democratic voters were more likely than Republican voters to have their vote-by-mail ballots rejected for signature mismatches, a fact likely due to the demographics of such voters, who tend to earn less, obtain less formal education, and speak English with lower levels of proficiency. *Id.*

62. For all of these reasons, HF 516’s new signature matching requirements will burden, abridge, and deny the right to vote of many Iowans eligible to cast ballots. These burdens will not be distributed evenly across all voters, but will rather have a disproportionate burden on certain types of voters who have variations in their signatures that are likely to be

found as mismatched. Specifically, these burdens will disproportionately block voters who are poorer, have less formal education, write English with lower levels of proficiency or as a second language, people with disabilities or are ill, elderly people, young people, people who travel frequently, and voters who favor Democratic candidates from casting a ballot that will be counted.

63. Furthermore, the law is highly likely to be implemented differently for similarly situated voters, depending on nothing more than which individual reviews and compares their signatures.

64. And, by failing to ensure that all voters whose ballots are alleged to bear a mismatched signature (including voters whose ballots arrive in the final days before election day) will be promptly notified and offered a meaningful opportunity to contest or to cure a purported mismatch, Iowa has further substantially burdened the right to vote.

65. At no point during the legislative debate on HF 516 did the State (including any member of the executive branch or state legislature) demonstrate a compelling need for or justify the reliability of signature matching by election administrators. This includes the public statements by the Office of the Secretary of State and the key sponsors of the legislation in the Iowa House and Senate.

66. Several people who testified during the legislative process voiced serious concerns that the signature verification process would abridge the rights of voters.

67. During the March 6, 2017, public hearing of the House State Government Committee, for example, Daniel Zeno from the Iowa ACLU testified that “peoples’ signature changes day by day, people who are elderly, people who have disabilities, their signatures are

more likely to change, and remember we are talking about poll-workers who are not handwriting experts comparing signatures.”

68. Myrna Loehrlein of the League of Women Voters of Iowa stated that the League was particularly concerned about signature verification, which is “rife with opportunities for bias, conscious and unconscious,” and difficult to implement given that the “people performing that verification are not experts.”

69. Connie Ryan of the Interfaith Alliance of Iowa testified that the signature verification requirement “is fraught with problems . . . some people cannot sign their name because of physical or intellectual disabilities, signatures can change with age, illness such as a stroke, or injury” and will lead to “discrimination,” placing “poll workers in the difficult position of determining” who should be allowed to vote.

70. Election officials shared these serious concerns. During a January 26, 2017, hearing before House State Government Committee, for example, Jasper County Auditor Dennis Parrott said that signature verification will create “a terrible burden” for Iowa’s thousands of poll workers, noting that “signatures change over time . . . they change with age. They change with health issues.”

71. Likewise, Johnson County Auditor Travis Weipert indicated that signature verification burdens poll workers and could lead to inconsistent implementation.

72. Boon County Auditor Philippe Meier e-mailed Secretary Pate and Deputy Secretary Olson to express concerns about the signature verification requirement. Auditor Meier stated that because a majority of voters in the auditor’s county cast absentee ballots, the auditor asked “I wonder how we would accomplish all of signature review fairly. . . . I shudder at the

added expenses this ad[d]s to the process . . . [o]ften times we get over 200 ballot requests per day.”

73. Butler County Auditor Mary Brower, wrote to Deputy Secretary of State Olson to “STRONGLY DISAGREE with the signature verification,” indicating that she didn’t “know that I ever sign my name the same way.”

74. There is no sufficient justification for imposing a signature verification requirement. This measure does not achieve any of the objectives of HF 516 promoted by Secretary of State Pate; it does not improve “voter verification,” “shore up voter confidence,” or “improve[] accountability.” Nor does a “Myths vs. Facts” advocacy document produced by Deputy Secretary of State Olson in support of the legislation and distributed to county auditors on January 12, 2017, provide any rationale justifying the signature verification requirement.

Additional Burdens of the Absentee Requirements on In-person Voting

75. In addition, given the widespread use of absentee voting, making it more difficult for people to cast absentee ballots will likely result in more voters casting ballots on election day in-person at precinct locations, which in turn will increase lines and waiting times on election day. According to one Iowa county auditor, the restrictions on absentee voting “could lead to some larger lines . . . possibly at the polls,” lengthening waiting times and thus reducing voter turnout. This change will likely make it more burdensome for all Iowa voters to cast ballots.

B. *Voter ID Requirements*

76. Beginning in 2019, HF 516 requires voters to present identification to vote in person. HF 516 § 27; Iowa Code § 49.78. In elections in 2018, however, a voter without identification may execute an affidavit attesting to his or her identity. HF 516 § 27; Iowa Code § 49.78(8).

HF 516's Voter ID Requirements are Burdensome and Irrational

77. The legislation enumerates four types of identification that are accepted without proof of current address: (1) an Iowa driver's license; (2) an Iowa nonoperator's identification card; (3) a U.S. passport; or (4) a U.S. military or veterans identification card. Iowa Code § 49.78(2)(a).

78. HF 516 further provides that "each active, registered voter whose name does not appear in the department of transportation's files" will be issued a Voter ID Card containing a signature line and a four-digit personal identification number ("PIN"); this card is in addition to the voter registration card issued to all voters. HF 516 § 18; Iowa Code § 48A.10A(1). The Voter ID Card is accepted as identification without proof of address, but the voter registration card issued to every voter is not.

79. The continued issuance of Voter ID Cards is "contingent upon appropriations by the general assembly in sufficient amounts to meet the requirements of this section." *See* HF 516 § 18; Iowa Code § 48A.10A(4).

80. The legislation also allows a voter to establish identity using an out-of-state driver's licenses or nonoperator's identification, an employer identification, or an Iowa student identification, but voters presenting these types of identification must also prove their current address. Iowa Code § 49.78(3)(b) (incorporating by reference § 48A.7A(1)(b)). However, any of these forms of identification must contain "the person's photograph and a valid expiration date." Iowa Code § 48A.7A(b)(1). Student identification cards at nearly all colleges and universities in Iowa lack expiration dates and are therefore not valid identification.

81. Notably, for these types of identification, if the "the photographic identification presented does not contain the person's current address in the precinct," the voter must also show

proof of address, current within 45 days, by providing a residential lease, property tax statement, utility bill, bank statement, paycheck, government check, or other government document. Iowa Code § 48A.7A(b)(2).

82. The list of accepted identification is arbitrary and irrational for several reasons.

83. *First*, the identification accepted without proof of address excludes forms of identification that are equally reliable as those it includes. For example, the voter registration card issued to every voter is not accepted as identification, but the Voter ID Card that is issued simultaneously based on the same information to certain voters is accepted. Out-of-state licenses are not accepted as identification without further proof of address despite accepting U.S. passports and veterans identification (which have no connection to Iowa residency) without proof of address. An amendment to HF 516 to permit voters to use additional reliable forms of identification—including a birth certificate; a social security card; certain government-issued benefits cards; or a firearm, hunting, or fishing license—was rejected on a party-line vote, despite HF 516 allowing the photo-less Voter ID Card to be used.

84. *Second*, the identification accepted only with proof of address excludes forms of identification that are equally reliable as those it includes. For example, student identification cards issued by schools and colleges outside of Iowa are not accepted, whereas out-of-state employer identification is accepted. *See* Iowa Code § 48A.7A(b)(1).

85. *Third*, the exclusion of some forms of expired identification (but not others) is arbitrary and irrational: the expiration of the identification has no relationship to the individual's qualification to vote and the individual's identity remains the same. An Iowa drivers' license and nonoperator's identification is accepted for 90 days after its expiration date, but other expired identification, including a passport or out-of-state identification, is not accepted even the day

after it expires. *See* Iowa Code §§ 48A.7A(b)(1), 49.78; Iowa Rule 721—21.3(1)(b). In addition, Iowa nonoperator’s identification or military or veterans identification is accepted even if it has no expiration date, while employee or student identification or out-of-state nonoperator’s identification is not. Iowa Rule 721—21.3(1)-(2).

86. The burden of the voter identification requirements will also be felt disproportionately by certain groups of voters. A lower percentage of eligible voters who are racial, ethnic, or language minorities, low-income, young, old, or move frequently possess an Iowa driver’s license, Iowa nonoperator’s identification, U.S. Passport, or military or veterans identification that is valid identification. Accordingly, the voter identification requirements of HF 516 will disproportionately burden members in those groups.

87. Minority voters disproportionately favor Democratic candidates. In Iowa, Hillary Clinton received 63 percent of the Latino vote in 2016 over Donald Trump’s 26 percent. National exit polls conducted in the same election show that 89 percent of African-American voters supported Hillary Clinton, while only eight percent of African-American voters supported Donald Trump. Similarly, in the 2012 general election, nationally, Barack Obama received 93 percent and 71 percent, respectively, of the African-American and Latino vote. In Iowa, younger voters and older voters are also disproportionately registered Democratic and vote for Democratic candidates versus voters of other ages.

88. The existence of the identification requirement and limitations on the identification accepted will increase the burden and abridge the right to vote. Even if every Iowa voter were issued and received a valid identification, which is not the case, the burdens of the ID law still clearly outweigh any purported interests, because a substantial number of voters will lose their identification or not bring it to the polls on election day. The likelihood of a voter not

having a valid identification at the polls on election day is especially high for voters who do not have an Iowa driver's license, Iowa nonoperator's identification, U.S. Passport, or military or veterans identification and therefore be reliant upon a Voter ID Card, which will have typically been issued months or years before an election and not used for any purpose other than to vote. These voters will disproportionately be racial, ethnic, or language minorities, low-income, young, old, and/or frequent movers.

The Secretary's Misinformation regarding Voter ID requirements

89. Despite a statutory provision requiring acceptance of an out-of-state driver's licenses or nonoperator's identification, an employer identification, or an Iowa student identification (with proof of address) (see ¶¶ 80–81, *supra*), the Secretary of State's website omits them from the list of accepted identification in its frequently asked questions:

Iowa Secretary of State [US] | https://sos.iowa.gov/elections/voterinformation/voterIDfaq.html



IOWA SECRETARY OF STATE

Paul D. Pate



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Voter ID FAQ

- [What is a valid form of ID to show at the polls?](#)
- [When do voters have to start showing ID at the polls?](#)
- [What about voters who don't have an ID?](#)
- [What if I lose my ID or forget to take it to the polls?](#)
- [Is ID required for absentee ballots?](#)
- [How does this law impact Uniformed and Overseas Citizens Absentee Voting Act \(UOCAVA\)?](#)
- [How does this law affect voter registration?](#)
- [How will signature verification work?](#)
- [How does the signature verification provision work on absentee ballots?](#)
- [What will be the impact on college students?](#)
- [How do the Electronic Poll Books work?](#)
- [Who is adversely impacted by this law?](#)
- [What are provisional ballots and how do they work?](#)

[Click here to visit the Voter Ready website](#)
For access to the Voter Ready Toolkit, email sos@sos.iowa.gov.

What is a valid form of ID to show at the polls?

- Iowa Driver's License
- Iowa Non-Operator's ID
- U.S. Passport
- Military ID
- Veteran's ID
- Voter ID Card

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90. In addition, although Voter ID is not required to vote in the 2018 election (see ¶ 76, *supra*), the Secretary of State’s communications about the “soft rollout” in 2018 will confuse and mislead a substantial number of voters by implying that identification is necessary to

vote, thereby discouraging some voters from attempting to vote. For example, the Iowa Secretary of State has purchased Facebook advertisements stating: “Beginning in 2018, Iowa voters will be asked to show a form of valid identification when voting” and listing “ID” as one of three necessary steps to be “Voter Ready,” as shown below. The other two steps—“Register” and “Vote”—are clearly mandatory to cast a vote.

Iowa Secretary of State Paul Pate
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Beginning in 2018, Iowa voters will be asked to show a form of valid identification when voting. Iowans, get voter ready!

VOTER READY

- ✓ REGISTER
- ✓ ID
- ✓ VOTE

IOWANS, GET VOTER READY!

BEGINNING IN 2018, IOWA VOTERS WILL BE ASKED TO SHOW A FORM OF VALID IDENTIFICATION WHEN VOTING. [CLICK TO LEARN MORE.](#)

Get Voter Ready
Learn new Iowa voting rules.
SOS.IOWA.GOV [Learn More](#)

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The clear implication of this advertisement is that identification is indeed required to vote in 2018. This and similar messages are likely to lead qualified voters in Iowa to understand that “valid identification” is necessary to vote, thereby discouraging a substantial number of qualified voters who do not have ID, or do not know that the ID they have is acceptable, from voting.

91. The soft rollout has already proven itself prone to poll-worker error in local elections held earlier this year, with the likely result in the upcoming (and higher-turnout) November election being longer wait times for all voters and possible disenfranchisement of voters who are led to believe that they do, in fact, need a form of HF 516-sanctioned ID to vote in 2018.

92. The *Des Moines Register* reported one of several incidents during a recent Polk County election where poll workers were unaware that a registered voter who signed an affidavit of identity was entitled to vote a regular ballot without producing identification during the 2018 soft rollout. If similar errors continue (as they almost certainly will), a substantial number of qualified voters may be improperly prohibited from voting.

Additional Burdens of the Voter ID Requirements

93. In addition, the complex, detailed, and changing voter identification requirements risk erroneous application by part-time poll workers who have varying levels of experience, training, and competence. Voter ID laws—even when not technically in force, as in a soft rollout—disenfranchise voters because erroneous information and execution is inevitable.

94. The identification will also burden all in-person voters by lengthening the wait times to vote, increasing the inconvenience and cost to all voters to cast a ballot. As one employee with 19 years of experience in a county auditor’s office put it, “voter ID . . . is definitely going to slow down the line for everyone.” It is well-recognized that one of the most substantial factors in line length and waiting times at polling locations is the “service time,” meaning the length of time that it takes a voter to cast a ballot. One of the elements in determining “service time” is the process involved in checking in and confirming the eligibility of voters. Longer “service times” can often result in longer waiting times, which in turn block

people from voting. *See, e.g.,* Spencer, D. M. & Markovits, Z. S., *Long Lines at Polling Stations? Observations from an Election Day Field Study*, *Election Law Journal* 9(1): 3–17 (2010), at 15–16; Alvarez, R. M., Ansolabehere, S., Berinsky, A., Lenz, G., Stewart III, C. & Hall, T., *2008 Survey of the Performance of American Elections: Final Report* (2009), at 32–36. This effect will burden and abridge the rights of all eligible individuals to participate in elections, and will particularly burden and abridge the voting rights of poor and minority voters, especially when it is combined with the effects of various other provisions in HF 516.

95. Voting will be further slowed by the requirement that precinct election officials review a voter’s “signature[] to determine whether the person offering to vote appears to be the person depicted on the identification card.” HF 516, § 27(2)(b); Iowa Code § 49.78(2)(b). As described above, any hypothetical state interest purported to support in-person signature verification is further undercut by the fact that HF 516 requires individuals wishing to vote in person to prove their identity by showing a photographic identification card or voter identification card (if they lack certain forms of photographic identification) before they may cast a ballot. *See* HF 516, §§ 12–26. Showing such identification is more than sufficient to verify an individual’s identity. Adding signature verification to this process will only serve to increase wait times for voters and result in disparate treatment of and, in some cases, the total disenfranchisement of lawful, eligible voters.

96. Precincts that do not use electronic poll books will be at especially great risk of poll worker error and longer check-in times. According to the Iowa Fiscal Services Division, approximately 600 of Iowa’s 1681 precincts did not use electronic poll books as of January 2017. Electronic poll books provide step-by-step instructions to check-in voters applying the new mandates of HF 516. The Secretary of State has issued no similar step-by-step instructions for

precincts that do not use electronic poll books. The use of electronic poll books may also offset, in part, the longer check-in times required to complete the identification procedures mandated by HF 516. For these reasons, voters at precincts without electronic poll books will be especially likely to be burdened or blocked from voting.

97. Cumulatively, these burdens and risks of disenfranchisement are especially severe for certain voters who must use the Voter ID Card, and increase the burden of voting for all voters. These provisions will burden numerous qualified voters, and block some of them from voting.

C. *Elimination of the Straight-Party Option*

98. Prior to the enactment of HF 516, Iowa voters could cast “straight-party ballots” by marking a single oval on the ballot for all candidates in one political party. Iowa Code Ann. §§ 49.37, 49.57(2), 49.94 (2016). Iowa voters have been afforded this expedited method of voting for more than seven decades. *See* Iowa Code Chapter 40, § 811 (1939); Iowa Code Ann. § 49.94 (1958).

99. Straight-party voting is a popular and widespread voting option in Iowa. In December 2014, the Secretary of State’s office released details of the prevalence of straight-party voting for the first time. The data showed that straight-party voting is popular among Iowa’s voters: 37 percent of Iowa voters cast a straight-party ticket in the 2014 general election, and 33 percent of Iowa voters voted a straight-party ticket in the 2016 general election.

100. Section 46 of HF 516 arbitrarily eliminates this longstanding and popular means of voting, a decision that will burden the right to vote of all Iowans, most immediately by increasing wait times for voting and causing widespread voter confusion. The long-standing availability and use of straight-party voting, a practice that enhances the efficiency of the voting

process by reducing the time it takes an individual to cast a ballot, has contributed to the efficiency of Iowa's past elections.

101. Because eliminating straight-party voting increases the time that it takes an individual to vote, it will cause an increase in wait times for voting, which in turn will make voting harder for many voters and impossible for others. The Fiscal Services Division's analysis of HF 516 predicted that "[e]liminating straight party voting may cause longer lines at polls" In Michigan, experts and county election administrators determined that eliminating straight-party voting "will increase wait times." Studies have found that in the election following the elimination of straight-party voting in North Carolina, wait times were longer in counties that previously had higher levels of straight-party voting. *See* Erik J. Engstrom & Jason M. Roberts, *The Politics of Ballot Choice*, 77 Ohio State Law Journal 839, 863 (2016). Longer wait times result in disenfranchisement of voters who are unable to wait through them—for example, due to job or family commitments or physical disability—a burden that falls disproportionately on the poor and minorities.

102. As found by the Sixth Circuit, eliminating straight-party voting will also abridge the right to vote by increasing voter confusion and causing voters accustomed to straight-party voting to miscast ballots. *See Michigan State A. Philip Randolph Inst. v. Johnson*, 833 F.3d 656, 664–65 (6th Cir. 2016).

103. Numerous experts have found that straight-party voting makes it easier for some citizens to participate in the electoral process, because it does not require navigating the ballot to determine the proper place to vote for each individual candidate of the voter's choice and is less time consuming to complete the ballot.

104. The elimination of the straight-party voting option is particularly burdensome for voters with low English-language literacy, who will be more likely to mark their ballots erroneously or inadvertently fail to vote every race without a straight-party voting option.

105. Eliminating the option for straight-party voting will increase the number of ballots that abstain in down-ballot races (denoted by political science as “ballot roll-off”), as has occurred in other states that eliminated straight-party voting such as North Carolina.

106. The elimination of straight-party voting will be particularly burdensome for Iowa’s minority voters. In Iowa, counties with a higher percentage of African American voting-age population have a higher percentage of straight-party votes. Similarly, a statistical analysis of ballots cast in Michigan showed that “African Americans are more likely to use the straight party voting option and that its elimination will disproportionately affect African American voters.” While about 50% of Michigan voters used the straight-party option, the rate for districts that are majority African-American was 67% in 2012, and 73.5% in 2014. Published academic studies also show that minority voters are more likely to use a straight-party voting option than white voters. *See* Engstrom & Roberts, *supra*, 77 Ohio State Law Journal at 858–864 (finding African Americans disproportionately use straight-ticket option in North Carolina); Douglas G. Feig, *Another Look at Race, Roll-off, and the Straight-Ticket Option*, 37 Politics & Policy 529, 533 (2009) (finding “black voters are about twice as likely as white voters to use” a straight-party option based on study of Kansas City, Missouri, St. Louis, Missouri, and Indianapolis, Indiana); Douglas G. Feig, *Race, Roll-off, and the Straight-Ticket Option*, 35 Politics & Policy 548, 560 (2007) (finding “black voters are about twice as likely to use the straight-party option as white voters, at least in recent years in Alabama”).

107. Democratic voters also disproportionately use the straight-party voting option in Iowa and will be disproportionately burdened by its elimination. In 2016, 37.57% of Hillary Clinton’s votes were by straight-party vote, versus 32.31% of Donald Trump’s votes. In the 2014 race for U.S. Senate, Democrat Bruce Braley received 39.30% of his votes by straight-party ballot, whereas Republican Joni Ernst received 36.03% of her votes by straight-party ballot.

108. At no point during the legislative debate on HF 516 did the State, including any member of the executive branch or state legislature, provide any justification to eliminate straight-party voting. This includes the public statements by the Office of the Secretary of State and the key sponsors of the legislation in the Iowa House and Senate. There is no justification for eliminating a widely used and popular voting practice that reduces the time it takes to cast a ballot.

CAUSES OF ACTION

COUNT I

(Violation of Article I, Section 9 and Article II, Section 1 of the Iowa Constitution (Substantive Due Process, Right to Vote): *All Challenged Provisions*)

109. Petitioners reallege and incorporate by reference all prior paragraphs of this Complaint and the paragraphs in the counts below as though fully set forth herein.

110. The Iowa Constitution mandates that all adult residents “shall be entitled to vote at all elections,” Article II, § 1, except those disqualified by the Article II, § 5. Thus, “[v]oting is a fundamental right in Iowa . . .” and “regulatory measures abridging the right to vote ‘must be carefully and meticulously scrutinized.’” *Chiodo v. Sect. 43.24 Panel*, 846 N.W.2d 845, 848, 856 (Iowa 2014) (citation omitted).

111. Article I, Section 9 of the Iowa Constitution mandates that “no person shall be deprived of life, liberty, or property, without due process of law,” which “prevents the government from engaging in conduct that shocks the conscience or interferes with rights implicit in the concept of ordered liberty.” *King v. State*, 818 N.W.2d 1, 31 (Iowa 2012) (internal quotation marks omitted).

112. A substantial burden on or abridgement of a fundamental constitutional right such as the right to vote is subject to strict scrutiny. *State v. Hernandez-Lopez*, 639 N.W.2d 226, 238 (Iowa 2002); *King*, 818 N.W.2d at 31 (Iowa 2012). Accordingly, the court must “determine whether the government action infringing the fundamental right is narrowly tailored to serve a compelling government interest.” *Hernandez-Lopez*, 639 N.W.2d at 238.

113. The challenged provisions impose substantial burdens on voters generally, and particularly severe burdens on groups of voters who more often vote absentee (including women, older voters, young voters, and Democratic voters), are more likely to be deemed to have a mismatched signature (including voters who are poorer, have less formal education, write English with lower levels of proficiency or as a second language, people with disabilities or are ill, elderly people, and young people), disproportionately lack a valid Iowa driver’s license or nonoperators identification that matches their voter registration (including voters who are racial, ethnic, or language minorities, low-income, young, old, and/or frequent movers), and disproportionately use the straight-party option (African Americans, voters with lower English literacy, and Democratic voters). Each of these groups disproportionately supports Democratic candidates.

114. Where, as here, multiple, simultaneously-imposed voting restrictions are challenged, the effects must be measured cumulatively, not in isolation, and must be justified

with evidence of correspondingly weighty interests. *See, e.g., Pisano v. Strach*, 743 F.3d 927, 933 (4th Cir. 2014) (“[W]e evaluate the combined effect” of ballot access rules); *Wood v. Meadows*, 207 F.3d 708, 713 (4th Cir. 2000) (considering other statutory provisions when analyzing constitutionality of filing deadline); *see also Clingman v. Beaver*, 544 U.S. 581, 607–08 (2005) (O’Connor, J., concurring in part and concurring in the judgment) (“A panoply of regulations, each apparently defensible when considered alone, may nevertheless have the combined effect of severely restricting participation and competition.”).

115. The individual impact of each of the challenged provisions is severe, as is their cumulative burden. Not only will voters face increased risks of being turned away at polling locations and having their absentee ballot applications and absentee ballots rejected or discarded, they will encounter longer lines and waiting times at polling locations because of new identification requirements applied by undertrained precinct workers. These measures, cumulatively, will severely burden voters. None of the challenged provisions serves a compelling government interest, nor are any of the challenged provisions narrowly tailored to do so.

COUNT II

(Violation of the Article I, Sections 6 and 7 of the Iowa Constitution (Undue Burden): All Challenged Provisions)

116. Petitioners reallege and incorporate by reference all prior paragraphs of this Complaint and the paragraphs in the counts below as though fully set forth herein.

117. “The foundational principle of equal protection is expressed in article I, section 6 of the Iowa Constitution,” *Varnum v. Brien*, 763 N.W.2d 862, 878 (Iowa 2009), while Article I, Section 7 protects the “liberty of speech.” The Iowa courts consider case law interpreting the analogous federal Constitutional provisions when interpreting the Iowa Constitution. *See In re*

A. W., 741 N.W.2d 793, 806–07 (Iowa 2007); *Iowans for Tax Relief v. Camp. Fin. Dis. Comm’n*, 331 N.W.2d 862, 868 (Iowa 1983).

118. A court considering a challenge to an election law under these provisions must carefully balance the character and magnitude of injury to the voting rights that the petitioners seek to vindicate against the justifications put forward by the State for the burdens imposed by the rule. See *Burdick v. Takushi*, 504 U.S. 428, 434 (1992); *Anderson v. Celebrezze*, 460 U.S. 780, 789 (1983). “However slight th[e] burden may appear, . . . it must be justified by relevant and legitimate state interests sufficiently weighty to justify the limitation.” *Crawford v. Marion Cnty. Election Bd.*, 553 U.S. 181, 191 (2008) (Stevens, J., controlling opinion) (internal quotation marks omitted).

119. And, “it is especially difficult for the State to justify a restriction that limits political participation by an identifiable political group whose members share a particular viewpoint, associational preference, or economic status.” *Anderson*, 460 U.S. at 793. “‘Fencing out’ from the franchise a sector of the population because of the way they may vote is constitutionally impermissible.” *Carrington v. Rash*, 380 U.S. 89, 94 (1965), cited with approval in *Adams v. Fort Madison Cmty. Sch. Dist. in Lee, Des Moines & Henry Clys.*, 182 N.W.2d 132, 134, 144 (Iowa 1970).

120. The challenged provisions impose burdens on voters generally, and particularly severe burdens on groups of voters who more often vote absentee (including women, older voters, young voters, and Democratic voters), are more likely to be deemed to have a mismatched signature (including voters who are poorer, have less formal education, write English with lower levels of proficiency or as a second language, people with disabilities or are ill, elderly people, and young people), disproportionately lack a valid Iowa driver’s license or

nonoperator's identification that matches their voter registration (including voters who are racial, ethnic, or language minorities, low-income, young, old, and/or frequent movers), and disproportionately use the straight-party option (African Americans, voters with lower English literacy, and Democratic voters). Each of these groups disproportionately supports Democratic candidates.

121. Where, as here, multiple, simultaneously imposed voting restrictions are challenged, the effects must be measured cumulatively, not in isolation, and must be justified with evidence of correspondingly weighty interests. *See* ¶ 114, *supra*.

122. The individual impact of each of the challenged provisions is severe, as is the cumulative burden of these provisions. Not only will voters face increased risks of being turned away at polling locations and having their absentee ballot applications and absentee ballots rejected or discarded, they will encounter longer lines and waiting times at in-person absentee locations and election day precincts as a result of the abolition of straight-party voting and the application of new identification and signature verification requirements by undertrained precinct workers. These measures, acting in concert, will severely burden voters.

123. Given that the law does not plausibly further any weighty interest, the burdens imposed by HF 516 far outweigh the benefits of the law and the challenged provisions must therefore be invalidated under Sections 6 and 7 of Article I of the Iowa Constitution.

COUNT III

**(Violation of Article I, Section 6 of the Iowa Constitution
(Arbitrary, Discretionary, Standardless, and Disparate Treatment of Voters):
Signature Verification)**

124. Petitioners reallege and incorporate by reference all prior paragraphs of this Complaint and the paragraphs in the counts below as though fully set forth herein.

125. “The foundational principle of equal protection is expressed in article I, section 6 of the Iowa Constitution,” *Varnum*, 763 N.W.2d at 878. “The essential promise of equal protection is that ‘all persons similarly situated should be treated alike.’” *Clayton v. Iowa Dist. Court for Scott Cty.*, 907 N.W.2d 824, 827 (Iowa Ct. App. 2017) (quoting *Racing Ass’n of Cent. Iowa v. Fitzgerald*, 675 N.W.2d 1, 7 (Iowa 2004)).

126. The principle of equal protection has repeatedly been applied by courts to bar arbitrary and disparate treatment. In *Bush v. Gore*, the Supreme Court held that the Equal Protection Clause of the U.S. Constitution applies not just to the “initial allocation of the franchise,” but also to “the manner of its exercise,” and that “once granted the right to vote on equal terms, the State may not, by later arbitrary and disparate treatment, value one person’s vote over that of another.” 531 U.S. 98, 104–05 (2000). There, the Court found it problematic that individuals who would engage in the recount process “had no previous training in handling and interpreting ballots,” *id.* at 109, and that the recount procedures were not “consistent with [the] obligation to avoid arbitrary and disparate treatment of the members of [the] electorate,” *id.* at 105. Similarly, in *Wexler v. Anderson*, 452 F.3d 1226, 1231–32 (11th Cir. 2006), the appellate court found that a non-uniform voting practice that makes it “less likely” that a person in one county will “cast an effective vote” than a voter in another county is a question “of constitutional dimension.” And, in *Stewart v. Blackwell*, 444 F.3d 843, 871 (6th Cir. 2006), *vacated en banc as moot*, 473 F.3d 692 (6th Cir. 2007), the Sixth Circuit applied strict scrutiny to the use of disparate voting technologies by particular counties, concluding that the disparity in technologies “result[ed] in a greater likelihood that one’s vote will not be counted on the same terms as the vote of someone” in a different county.

127. HF 516’s new, unnecessary, and ill-conceived signature provisions will result in the improper rejection of absentee ballot applications and absentee ballots submitted and cast by lawful, eligible voters, in some cases resulting in their total disenfranchisement. Further, the signature verification provisions in HF 516 will necessarily be imposed disparately and arbitrarily in different counties, making it substantially more likely that a person in one part of the State will cast a vote that is counted than a person in another part of the State. Because these arbitrary, disparate, and standardless decisions will determine whether an individual’s vote will be counted, the signature-matching provisions in HF 516 violate Article I, Section 6 of the Iowa Constitution.

COUNT IV

(Violation of Article I, Section 9 of the Iowa Constitution (Procedural Due Process): *Signature Verification*)

128. Petitioners reallege and incorporate by reference all prior paragraphs of this Complaint and the paragraphs in the counts below as though fully set forth herein.

129. Article 1, Section 9 of the Iowa Constitution requires that “no person shall be deprived of life, liberty, or property, without due process of law.”

130. The right to vote is a liberty within the meaning of the Due Process Clause. *See, e.g.,* Iowa Const. art. II, § 1; *Chiodo*, 846 N.W.2d at 484; *Bowers v. Polk Cty. Bd. of Supervisors*, 638 N.W.2d 682, 692 (Iowa 2002); *Anderson*, 460 U.S. at 787; *Hunter v. Hamilton County Bd. of Elections*, 635 F.3d 219, 232, 243–44 (6th Cir. 2011).

131. To determine whether a person deprived of a liberty has been afforded procedural due process, the Iowa Constitution requires weighing “(1) the private interest that will be affected by the government action; (2) the risk of the erroneous deprivation of the interest, and

the probable value of additional procedures; and (3) the government interest in the regulation, including the burdens imposed by additional procedures.” *Hernandez-Lopez*, 639 N.W.2d at 240 (citations omitted).

132. A voter has a weighty interest in the exercise of the franchise. *See Griffin v. Pate*, 884 N.W.2d 182, 185, 207 (2016) (“[V]oting exists as a fundamental right for people who meet the constitutional qualifications.”); *Chiodo*, 846 N.W.2d at 848 (voting “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 the laws by which all must live”); *Wesberry v. Sanders*, 376 U.S. 1, 17–18 (1964) (“No right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live.”), *cited with approval in Devine v. Wonderlich*, 268 N.W.2d 620, 623 (Iowa 1978).

133. The procedure enacted by HF 516 that requires lay people determine the validity of a signature carries a great risk of erroneously rejecting valid ballots. Under HF 516 and its implementing regulations, election officials may reject a ballot received within three days of the election because the signature on the ballot envelope does not match the signature in the voter file, without notice to the voter and hence without voters’ ability to establish the validity of the ballot cast or curing any purported error. These voters are therefore disenfranchised without any opportunity to be heard to contest or to cure the purportedly mismatched signature. Omitting the signature matching procedure, or providing the opportunity for voters to contest or to cure a purported mismatched signature before the canvassing of votes, would carry less risk of erroneous deprivation of the right to vote.

134. The government has little or no interest in applying a burdensome, error-prone procedure. There is no evidence of significant levels of absentee voter fraud in Iowa, and the

government's interest in the integrity of elections was well-protected before the enactment of HF 516.

135. Therefore, the provisions of HF 516 and its implementing regulations that permit the rejection of absentee ballots because the signature on the ballot purportedly does not “match” the signature in the voter registration file violates the Article I, Section 9 of the Iowa Constitution.

COUNT V

(Judicial Review Pursuant to Iowa Code 17A.19(10) (Iowa Administrative Procedure Act): *Voter Verification Number*)

136. Petitioners reallege and incorporate by reference all prior paragraphs of this Complaint and the paragraphs in the counts below as though fully set forth herein.

137. On August 30, 2017, the Secretary of State issued a Notice of Intended Action (ARC 3282C), proposing among other things a new rule 721—21.306(53):

Incomplete absentee ballot applications. If the commissioner receives an absentee ballot request lacking any of the information required by 2017 Iowa Acts, House File 516, section 6(4)(a), the commissioner shall obtain the necessary information by the best means available pursuant to 2017 Iowa Acts, House File 516, section 6(4)(a). “Best means available,” for the purposes of this rule, means contacting the voter directly by mail, e-mail, or telephone or in person. Commissioners may not use the voter registration system to obtain the information.

138. Petitioner LULAC of Iowa filed a comment letter with other public interest organizations addressing the proposed regulations.

139. On November 8, 2017, the final regulation was filed by the Secretary of State, and adopted by the Administrative Rules Review Committee on December 12, 2017, with no change to rule 721—21.306(53).

140. The rule’s mandate that “[c]ommissioners may not use the voter registration system to obtain the information,” Iowa Administrative Code 721—21.306(53), violates the statutory requirement to use “the best means available” to “obtain” any “additional necessary information” for an absentee ballot application. Accordingly, the regulation is “in violation of [a] provision of law,” Iowa Code § 17A.19(10)(b), and it must be overturned.

141. In addition, the rule should be set aside as “unreasonable, arbitrary, capricious, or an abuse of discretion,” Iowa Code § 17A.19(10)(n), because the requirement that an election commissioner confirm a person’s identity by mail, phone, or email rather than verifying information that is readily available to the commissioner merely burdens the state and the voter without any sufficient countervailing public benefit.

PRAYER FOR RELIEF

WHEREFORE, Petitioners respectfully request that this Court enter the following relief against the Defendant:

- A. An order declaring that the challenged provisions violate the Iowa Constitution;
- B. An order declaring that regulations governing the voter verification number for absentee ballots violate the Iowa Administrative Procedure Act and setting aside those regulations;
- C. An order enjoining the Defendant, his respective agents, officers, employees, and successors, and all persons acting in concert with each or any of them from implementing, enforcing, or giving any effect to the challenged provisions;
- D. An order enjoining the Defendant, his respective agents, officers, employees, and successors, and all persons acting in concert with each or any of them from issuing false or misleading statements or other publicity regarding voter

identification requirements to vote in Iowa, and requiring the Defendant to issue corrective statements and other publicity to remedy past false or misleading statements;

- E. An order awarding Petitioners their costs, disbursements, and reasonable attorneys' fees incurred in bringing this action pursuant; and
- F. Such other and further relief as the Court deems just and proper.

Dated this 30th day of May, 2018.

Respectfully submitted,

/s/ _____

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