

IN THE IOWA DISTRICT COURT FOR LINN COUNTY

REPUBLICAN NATIONAL COMMITTEE,)	
DONALD J. TRUMP FOR PRESIDENT,)	
INC., NATIONAL REPUBLICAN)	No. EQCV095986
SENATORIAL COMMITTEE, NATIONAL)	
REPUBLICAN CONGRESSIONAL)	
COMMITTEE, and THE REPUBLICAN)	
PARTY OF IOWA,)	
Plaintiffs,)	DEFENDANT’S MOTION TO
)	RECONSIDER, AMEND, AND
v.)	ENLARGE THE COURT’S
)	ORDER GRANTING
JOEL MILLER, AUDITOR OF LINN)	TEMPORARY INJUNCTION
COUNTY, IOWA, in his official capacity,)	
Defendant.)	

COMES NOW Linn County Auditor Joel Miller, through counsel, and moves the Court to reconsider, amend, and enlarge its order granting Plaintiff’s motion for a temporary injunction. Reconsideration is warranted because the Court’s analysis is manifestly incorrect, and Auditor Miller desires to preserve error for appeal. In support of this motion, Auditor Miller states:

INTRODUCTION

In the August 27th Order for Temporary Injunction, the Court identified the issue in dispute as whether Auditor Miller “violated his duty to obey the order of the Iowa Secretary of State contained within the July 17, 2020, directive.” (08/27/20 Order for Temp. Injunction at 5). Inherent in resolution of that issue is whether the Iowa Secretary of State may preempt Auditor Miller’s county home rule power to conduct the elections in Linn County as expressly authorized in the Iowa Constitution and Code of Iowa. Additionally, resolution of the motion requires examination of whether the Iowa Secretary of State’s directive was a lawful exercise in authority in the first place. Because the Court did not address either issue in the August 27th order, reconsideration is warranted.

STANDARD OF REVIEW

Iowa R. Civ. P. 1.904(2) “permits the court to enlarge or amend its findings and conclusions and to modify or substitute the judgment or decree.” *In re Marriage of Okland*, 699 N.W.2d 260, 263-64 (Iowa 2005). A party has 15 days in which to file this motion. This motion, therefore, is timely.

ARGUMENT

I. THE COURT SHOULD RECONSIDER AND AMEND ITS FINDINGS BECAUSE THE SECRETARY OF STATE’S EMERGENCY ELECTION DIRECTIVE VIOLATES AUDITOR MILLER’S EXPRESS CONSTITUTIONAL AND STATUTORY HOME RULE AUTHORITY TO CONDUCT ELECTIONS IN LINN COUNTY

The Court asserts that “neither Defendant nor any county auditor (to the Court’s knowledge) challenged the [Secretary of State’s] directive as unconstitutional in a court proceeding.” (08/27/20 Ruling at 7). This is demonstrably false. In his resistance to the Plaintiffs’ motion for a temporary injunction, Auditor Miller claimed that his “actions have not been pre-empted by the Iowa Legislature and as such his actions are subject to County Home Rule.” (08/24/20 Resistance at 3, ¶12). This passage unmistakably represents a constitutional challenge to the Secretary of State’s Emergency Election Directive. Once this reality is accepted, the Courts analysis unravels from the threads from which it was spun. *See Chiodo v. Schultz*, 846 N.W.2d 845, 852 (Iowa 2014).

A. Article III, section 39A of the Iowa Constitution and Iowa Code Chapter with County Home Rule expressly authorize Auditor Miller to perform any function he deems appropriate to protect and preserve the rights, privileges, safety, health, comfort, and convenience of the Linn County residents in the conduct of Linn County elections

As the Court is keenly aware, Iowa has a rich tradition of county home rule. It is our state’s form of federalism under which all police powers inherently reside in counties and municipalities. The logical starting point for examining Auditor Miller’s home rule authority, of course, begins with the text of Iowa Constitution, which provides:

Counties home rule. Counties or joint county-municipal corporation governments are granted home rule power and authority, not inconsistent with the laws of the general assembly, to determine their local affairs and government, except that they shall not have power to levy any tax unless expressly authorized by the general assembly.

Iowa Const. art III, § 39A. The Iowa Supreme Court interprets section 39A to authorize counties to act pursuant to their home rule authority “unless a particular power has been denied to them by statute.” *City of Des Moines v. Master Builders of Iowa*, 498 N.W.2d 702, 703-04 (Iowa 1993). A county’s action “is not inconsistent with state law unless it is irreconcilable with state law.” Iowa Code § 331.301(4). To be “irreconcilable,” the act must “prohibit[] an act permitted by statute, or permit[] an act prohibited by a statute.” *City of Des Moines v. Gruen*, 457 N.W.2d 340, 342 (Iowa 1990). In deciding whether a county act is irreconcilable with a statute, “state laws are to be interpreted in a way to render them harmonious with [an exercise of county power] unless the court or other body considering the two measures cannot reconcile them, in which event the state law prevails.” *Green v. Cascade*, 231 N.W.2d 882, 890 (Iowa 1975).

Building upon article III, section 39A, the Iowa General Assembly implemented county home rule in Iowa Code chapter 331. In section 331.301, the General Assembly defined the scope of home rule authority:

A county may, except as expressly limited by the Constitution of the State of Iowa, and if not inconsistent with the laws of the general assembly, exercise any power and perform any function it deems appropriate to protect and preserve the rights, privileges, and property of the county or of its residents, and to preserve and improve the peace, safety, health, welfare, comfort, and convenience of its residents.

Iowa Code § 331.301(1). This substantive authority is inherent in the counties, and “the failure to state a specific power does not limit or restrict the general grant of home rule power conferred by the Constitution and [chapter 331].” *Id.* § 331.301(2). As for procedural authority, if “a procedure is not established by state law, a county may determine its own

procedure for exercising the power.” *Id.* § 331.301(5). The General Assembly further granted home rule authority in the county auditor to “serve a county commissioner of elections” and “[c]onduct all elections held within the county.” *Id.* 331.505(1),(2).

Taken together Iowa’s constitutional and statutory provisions expressly empower Auditor Miller to “exercise any power and perform any function . . . appropriate to protect and preserve the rights, privileges, . . . safety, health, welfare, comfort, and convenience” of Linn County residents in conducting “elections held with the county.” Iowa Const. art. III, § 39A; Iowa Code §§ 331.301, 331.505. Auditor Miller acted according to his county home rule authority when he mailed the absentee request cards (“ABRs”) to all Linn County residents. The Court’s failure to recognize this inherent constitutional and statutory authority is fatal to its analysis. Accordingly, Auditor Miller requests the Court to reconsider and amend its ruling to address his county home rule authority to mail ABRs.

B. Iowa Code section 53.7 expressly authorizes Auditor Miller to mail ABRs to Linn County residents

Auditor Miller’s home rule power to mail ABRs to Linn County residents can only be preempted by an irreconcilable law of the general assembly. Iowa Const. art. III, § 39A; Iowa Code §§ 331.301(1); 331.301(4). Here, the applicable state statute on solicitation of ABRs provides:

It shall be unlawful for any employee of the state or any employee of a political subdivision to solicit any application or request for application for an absentee ballot, or to take an affidavit in connection with any absentee ballot while the employee is on the employer’s premises or otherwise in the course of employment. However, any such employee may take such affidavit in connection with an absentee ballot which is cast by the registered voter in person in the office where such employee is employed in accordance with section 53.10 or 53.11. *This subsection shall not apply to any elected official.*

Iowa Code § 53.7(1) (emphasis added). The carve out for elected officials in the last sentence of section 53.7 reveals the General Assembly’s explicit consent for county auditors (and other elected officials) to “solicit” and “request” ABRs “in the course of employment.”

Id. Thus, Auditor Miller’s act of mailing ABRs to Linn County residents is “not inconsistent with the laws of the general assembly.” Iowa Const. art. III, § 39A; Iowa Code §§ 331.301(1). To the contrary, the Iowa General Assembly put its statutory stamp of approval on the practice. Iowa Code § 53.7. Auditor Miller acted within his county home rule authority under section 331.505 by mailing the ABRs to all Linn County residents. For this reason, Auditor Miller requests the Court to reconsider and amend its ruling to hold that Auditor Miller’s county home rule authority to mail ABRs to Linn County residents is consistent with Iowa Code section 53.7(1).

C. Iowa Code section 53.2 expressly authorizes Auditor Miller to mail “preaddressed” ABRs to Linn County residents

The Court is simply wrong in its interpretation that chapter 53 prohibits Auditor Miller from prefilling or prepopulating ABRs. For starters, the Court’s reliance on the title of section 53.2 is puzzling because the Iowa Supreme Court has rejected the use of statutory headings as a meaningful interpretive aid. *Atchison, T. & S.F.R. Co. & Bair*, 338 N.W.2d 338, 344 (Iowa 1983) (“The title of a statute or heading of a section cannot limit the plain meaning of the text”). Instead, the court recently explained in *Doe v. State*, 943 N.W.2d 608 (Iowa 2020), “[a]ny interpretative inquiry . . . begins with the language of the statute at issue.” *Id.* at 609. The relevant text of section 53.2 as amended by HF 2643, is set forth below:

53.2 Application for ballot.

1. *a.* Any registered voter, under the circumstances specified in section 53.1, may on any day, except election day, and not more than one hundred twenty days prior to the date of the election, apply in person for an absentee ballot at the commissioner’s office or at any location designated by the commissioner. However, for those elections in which the commissioner directs the polls be opened at noon pursuant to section 49.73, a voter may apply in person for an absentee ballot at the commissioner’s office from 8:00 a.m. until 11:00 a.m. on election day.

b. A registered voter may make written application to the commissioner for an absentee ballot. A written application for an absentee ballot must be received by the commissioner no later than 5:00 p.m. on the same day as the voter registration deadline provided in section 48A.9 for the election for which the ballot is requested, except when the absentee ballot is requested and voted at the commissioner's office pursuant to section 53.10. A written application for an absentee ballot delivered to the commissioner and received by the commissioner more than one hundred twenty days prior to the date of the election shall be returned to the voter with a notification of the date when the applications will be accepted.

2. *a.* The state commissioner shall prescribe a form for absentee ballot applications. However, if a registered voter submits an application on a sheet of paper no smaller than three by five inches in size that includes all of the information required in this section, the prescribed form is not required.

b. Absentee ballot applications may include instructions to send the application directly to the county commissioner of elections. However, no absentee ballot application *shall be preaddressed* or printed with instructions to send the applications to anyone other than the appropriate commissioner.

c. No absentee ballot application *shall be preaddressed* or printed with instructions to send the ballot to anyone other than the voter.

3. This section does not require that a written communication mailed to the commissioner's office to request an absentee ballot, or any other document be notarized as a prerequisite to receiving or marking an absentee ballot or returning to the commissioner an absentee ballot which has been voted.

4. *a.* Each application shall contain the following information:

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

b. If insufficient information has been provided, including the absence of a voter verification number, either on the prescribed form or on an application created by the applicant, the commissioner shall, ~~by the best means available, obtain the additional necessary information~~ within twenty-four hours after the receipt of the absentee ballot request, contact the applicant by telephone and electronic mail, if such information has been provided by the applicant. If the commissioner is unable to contact the applicant by telephone or electronic mail, the commissioner shall send a notice to the

applicant at the address where the applicant is registered to vote, or to the applicant's mailing address if it is different from the residential address. I the applicant has requested the ballot to be sent to an address that is not the applicant's residential or mailing address, the commissioner shall send an additional notice to the address where the applicant requested the ballot to be sent. A commissioner shall not sue the voter registration system to obtain additional necessary information. A voter requesting or casting a ballot pursuant to section 53.22 shall not be required to provide a voter verification number.

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

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

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

Iowa Code § 53.2 *as amended by* HF 2643 (2020) (emphasis).

The court’s view that section 53.2 prohibits prefilled or prepopulated ABRs overlooks the plain text of sections 53.2(b) and 53.2(c). *See Baur v. Baur Farms, Inc.*, 832 N.W.2d 663, 669 (Iowa 2013) (explaining that reconsideration under rule 1.904 is appropriate when the court may have overlooked an issue). *Both sections expressly allow the use of “preaddressed” ABRs* so long as they do not direct the ABR to be sent to anyone other than the auditor or direct the ballot to be sent to anyone other than the voter. Iowa Code §§ 53.2(b),(c). Through linguistic sleight-of-hand, Plaintiffs are careful to refer to Auditor Miller’s ABRs as “prepopulated.” (08/10/20 Pet. for Decl. Judgment at ¶¶ 9, 10, 11, 12, 13, 15). But, in this context, “prepopulated” and “preaddressed” are the same rose just by

other names. Auditor Miller's ABRs included his return address with the following information of the addressees:

- (1) The name of the registered voter;
- (2) The registered voter's date of birth;
- (3) The address at which the voter is registered to vote;
- (4) The registered voter's voter verification number; and
- (5) The name of the election for which the absentee ballot is requested.

In this way, Auditor Miller simply provided "preaddressed" ABRs as expressly authorized under Iowa Code section 53.2(b) and 53.2(c).

The Court also wholly overlooks the structure of chapter 53.2. As the Iowa Supreme Court also explained in *Doe*, court's must "read statutes as a whole rather than looking at words and phrases in isolation." *Doe*, 943 N.W.2d at 613. Indeed, "no interpretive fault is more common than the failure to follow the whole-text cannon, which calls on the judicial interpreter to consider the entire text, in view of its structure and of the physical and logical relation of its many parts." *Id.* at 610 (quoting Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* at 167 (2012)).

When the statute is considered as a whole, it is apparent the statute is concerned only with identifying the steps a voter must take to obtain an absentee ballot rather than limiting the county auditor's authority. Iowa Code § 53.2(1)(b) ("A registered voter may make written application to the commissioner for an absentee ballot"). The voter may use either the Secretary of State's ABR form or a non-official ABR form so long as it is "no smaller than three by five inches in size." *Id.* § 53.2(2)(a). Either ABR may be "preaddressed" so long as it does not direct the ABR to be sent to anyone other than the auditor or the ballot to be sent to anyone other than the voter. *Id.* § 53.2(2)(b),(c). Notarization is not required. *Id.* § 53.2(3). If the ABR contains the requisite information, the auditor must provide the voter with an absentee ballot. *Id.* § 53.2(4)(a). Regardless of

the form of ABR used (official or non-official), if the information is insufficient, the auditor must follow up by telephone, e-mail, or snail mail. *Id.* § 53.2(4)(b).

Lastly, the Secretary of State, exercising his supervisory powers, has never taken the position that section 53.2 requires a voter to manually fill out the information in an ABR—other than his or her signature. Just the opposite. The Linn County Auditor has used preaddressed labels on ABRs for years. (Decl. of Joel Miller in Support of Motion to Reconsider at ¶¶ 4-7; Preaddressed ABR of Paul Pate). The Secretary of State’s office has never voiced any objection to the practice. (Decl. of Joel Miller in Support of Motion to Reconsider at ¶¶ 8-9). In fact, *Secretary Paul Pate has requested an absentee ballot using a Linn County Auditor preaddressed ABR in at least one prior election.* (Decl. of Joel Miller in Support of Motion to Reconsider at ¶ 17; Preaddressed ABR of Paul Pate). Yet, the Court’s statutory interpretation, taken to its logical conclusion, would mean that Secretary Pate’s preaddressed ABR would have been illegal. (08/27/20 Order for Temp. Injunction at 6-7) (“the Iowa Legislature intended for the information to be included on the [ABR] to be provided by the voter himself or herself . . . county auditors cannot prepopulated the ABR form for voters”). There is no way that could be the law. Instead, what was legal for Secretary Pate then is legal for Linn County voters today.

In sum, Auditor Miller’s ABR mailing to Linn County is wholly consistent with the text and structure of section 53.2. Indeed, *Plaintiffs make no claim in their Petition that Auditor Miller violated any provision of Iowa Code chapter 53.* (08/10/20 Pet. for Decl. Judgment). Similarly, the *Secretary of State makes no claim in either technical infraction letter that Auditor Miller violated any provision Iowa Code chapter 53.* (08/26/20 Decl. of Ostregren; 08/25/20 Letter from Pate to Commissioner Miller; 08/25/20 Letter from Pate to General Miller). Instead, both Plaintiffs’ Petition and Secretary of State’s letters seek relief solely on the basis that Auditor Miller has violated the July 17, 2020, Emergency Election

Directive. (08/10/20 Pet. for Decl. Judgment at ¶ 14; 08/26/20 Decl. of Ostregren; 08/25/20 Letter from Pate to Commissioner Miller; 08/25/20 Letter from Pate to General Miller).¹

Auditor Miller, therefore, requests the Court to reconsider and amend its ruling clarify that his preaddressed ABR form accords with the text, structure, and Secretary of State's historical construction of Iowa Code section 53.2.

D. The Secretary of State cannot usurp Auditor Miller of his county home rule authority through an Emergency Election Directive

Taken together, the discussion above establishes the Auditor Miller has express statutory authority as “an elected official” to “solicit” and “request” ABRs “in the course of [his] employment.” Iowa Code § 53.7. Further his use of non-official, “preaddressed” ABRs is plainly allowed under section 53.2(2). *Id.* at § 53.2(2)(a), (b), & (c). Thus, Auditor Miller acted pursuant to his constitutional county home rule authority to take steps to protect the rights, health, safety, and convenience in the conduct of the upcoming Linn County election by mailing preaddressed ABRs to county residents. Iowa Const. art. III, § 39A; Iowa Code §§ 331.301, 33.505.

The Iowa Constitution makes clear that an exercise of county home rule power may only be preempted by a “law[] of the general assembly.” Iowa Const. art. III, § 39A (emphasis added). The Secretary of State possesses no constitutional authority to preempt county home rule. *Id.* art. IV, § 22. Nor may an act of the legislative council, which is not

¹ Notably, neither the Plaintiffs' Petition, nor the Secretary of State's technical infraction letters, allege that Auditor Miller's preaddressed ABRs violate the requirement that a voter provide his or her information to the auditor. To “provide” means to “supply or make available” *See* <https://www.merriam-webster.com/dictionary/provide> (last accessed Aug. 30, 2020). No reasonable user of the English language would dispute that a voter “provides” the information required under section 53.2(4) to the auditor when he or she (1) verifies the accuracy of the preaddressed ABR, (2) signs the ABR under penalty of perjury; and (3) mails the ABR to the auditor's office. The fact that Auditor Miller preaddressed the ABRs is consequential. Consequently, Auditor Miller requests the Court reconsider and amend its findings in this regard as well.

even mentioned in the Iowa Constitution,² preempt county home rule. *Id.* art. III, § 1 (“The legislative authority of this state shall be vested in a general assembly, which shall consist of a senate and house of representatives; and the style of every law shall be, ‘Be it enacted by the General Assembly of the State of Iowa’”). In this case, the Iowa General Assembly expressly contemplated legislation in response to the COVID-19 crisis in the last legislation session. To that end, the General Assembly enacted HF 2486 and HF 2643, which related to the Secretary of State’s emergency powers as well as the auditor’s duties.³ In neither legislation did the General Assembly prohibit a county auditor from exercising his constitutional and statutory rights to solicit and request preaddressed ABRs from the county’s residents. The Court, therefore, should reconsider, amend, and enlarge its findings to expressly declare that the Secretary of State’s Emergency Election Directive cannot preempt Auditor Miller’s act of mailing preaddressed ABRs to Linn County residents pursuant to his county home rule power.

E. The Secretary of State exceeded his emergency powers in requiring county auditors to mail only blank, official state ABRs

The Secretary of State’s Emergency Elective Directive cites to Iowa Code section 47.1 as the basis for restricting county auditors from mailing preaddressed, nonofficial ABR forms. Section 47.1, however, does not give the Secretary of State carte blanche to rewrite Iowa’s election laws. Instead, section 47.1 provides as follows:

2. *a.* The state commissioner of elections may exercise emergency powers over any election being held in a district in which either a natural or other disaster or

² Iowa Code section 2.42 enumerates the powers and duties of the Legislative Council. *See* Iowa Code § 2.42. Making laws is not among its powers or duties—let alone laws that preempt county home rule. *Id.*

³ HF 2486 is available at <https://www.legis.iowa.gov/legislation/BillBook?ga=88&ba=hf2486> (last accessed on 08/30/20). HF 2643 is available at <https://www.legis.iowa.gov/legislation/BillBook?ga=88&ba=hf2643> (last accessed on 08/30/20).

extremely inclement weather has occurred. The state commissioner’s decision to alter any conduct for an election using emergency powers must be approved by the legislative council. If the legislative council does not approve the secretary of state’s use of emergency powers to conduct an election, the legislative council may choose to present and approve its own election procedures or choose to take no further action. The state commissioner of elections may also exercise emergency powers during an armed conflict involving United States armed forces, or mobilization of those forces, or if an election contest court finds that there were errors in the conduct of an election making it impossible to determine the result.

b. If an emergency exists in all precincts of a county, the number of polling places shall not be reduced by more than thirty-five percent. The polling places allowed to open shall be equitably distributed in the county based on the ratio of regular polling places located in unincorporated areas in the county to regular polling places in incorporated areas in the county.

* * *

The state commissioner shall adopt rules describing the emergency powers and the situations in which the powers will be exercised.

Iowa Code § 47.1(2), (4) HF 2486 (2020). Pursuant to this statutory mandate, the Secretary of State adopted rules describing the emergency powers during a federal election:

If an emergency occurs that will adversely affect the conduct of an election at which candidates for federal office will appear on the ballot, the election shall not be postponed or delayed. *Emergency measures shall be limited to relocation of polling places, modification of the method of voting, reduction of the number of precinct election officials at a precinct and other modifications of prescribed election procedures which will enable the election to be conducted on the date and during the hours required by law.*

Iowa Admin. Code. r. 721-21.1(12) (emphasis added). There can be no credible argument that the Secretary of State’s directive falls within any of these limited emergency powers. The methods of voting are set forth in Iowa Code chapter 43; not chapter 53. *Compare* Iowa Code § 49.1 *et seq.* with Iowa Code § 53.1 *et seq.* Moreover, restricting county auditors from mailing preaddressed, non-official ABRs is not a modification to the method of voting. Nor is it as procedure that is necessary to enable the election to be conducted on its currently scheduled date.

In fact, *the record evidence proves the opposite*. In June of 2020—before the Secretary’s directive—Iowa conducted a primary election in which “80% of Iowans who voted did so by absentee” resulting in “record turnout.” (08/10/20 Pl’s Motion for Temp. Injunction, Attachment B at 2).

Because the Secretary of State lacked the authority to issue the directive under his limited emergency powers in the first place, the Court’s entry of a temporary injunction undoubtedly will not stand on appeal. This is the quintessential circumstance in which reconsideration is warranted. *Iowa Electric Light & Power Co. v. Lagle*, 430 N.W.2d 393, 396 (Iowa 1988) (recognizing that a district court has inherent “power to correct its own perceived errors” and grant a motion to reconsider prior to final judgment). Accordingly, the Court should reconsider, amend, and enlarge its findings to declare that the Secretary of State’s lacked any statutory authority to issue his Emergency Election Directive that is at issue in this litigation.

II. THE COURT SHOULD ENLARGE ITS FINDINGS TO ADDRESS ISSUES INHERENT IN THE RESOLUTION OF PLAINTIFFS’ MOTION FOR TEMPORARY INJUNCTION THAT WERE NOT INCLUDED IN THE RULING

To preserve Auditor Miller’s record for appeal, he requests the Court to reconsider, amend, and enlarge its ruling in the following ways:

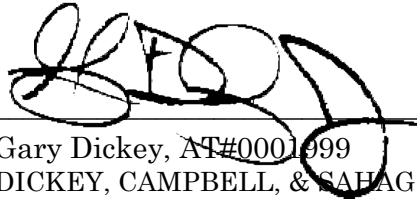
1. Find that Auditor Miller possesses county home rule authority to conduct elections in Linn County that can only be usurped by an irreconcilable law of the Iowa General Assembly. *See* Iowa Const. art. III, § 39A; Iowa Code §§ 331.301, 331.505;
2. Find that the text of Iowa Code section 53.7 expressly authorizes Auditor Miller to solicit and request ABRs in the course of his employment;
3. Find that the text of Iowa Code section 53.2(2)(a) expressly allows Auditor Miller to use official ABRs or non-official ABRs so long as they are larger than 3 by 5 inches in size;
4. Find that the text of Iowa Code sections 53.2(2)(b) and (c) expressly permit Auditor Miller to use preaddressed ABRs;

5. Find that the Secretary of State's Emergency Election Directive does not preempt Auditor Miller's county home rule authority to conduct elections in Linn County because it is not a law of the Iowa General Assembly. *See* Iowa Const. art. III, § 39A; Iowa Code §§ 331.301, 331.505; and
6. Find that the Secretary of State's Emergency Election Directive is not enforcement because he does not possess the emergency power to prohibit a county auditor from mailing a preaddressed ABR to county residents. *See* Iowa Code § 47.1(2), (4); Iowa Admin. Code. r. 721-21.1(12)

CONCLUSION

For these reasons, Linn County Auditor Joel Miller respectfully request that the Court reconsider, amend, and enlarge its order granting Plaintiffs' Motion for Temporary Injunction.

DATED this 31st day of August 2020.



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