

IN THE IOWA DISTRICT COURT IN AND FOR MONTGOMERY COUNTY

**STATE OF IOWA,
Plaintiff,**

vs.

**JOSEPH NORRIS,
Defendant.**

CASE NO. FECR012514

**BRIEF IN SUPPORT OF MOTION TO
DISMISS – WITH UPDATED
CITATIONS TO DEPOSITION
TRANSCRIPTS**

COMES NOW, Joseph Norris and for this Brief in Support of Motion to Dismiss states to the Court the following:

This Brief is nearly identical to the brief filed at D0027, except that it now contains citations to the deposition transcripts. References to Deputy Askey’s deposition have been added to the Due Process argument, as well. His deposition did not take place until after D0027 was filed. The cited deposition transcripts have been added to the updated appendix.

CRIMINAL CHARGE

On July 24, 2026, the State charged Mr. Norris in a one-count Trial Information with “First-Degree Election Misconduct—Failure to Perform Duties,” alleging:

On or about November 5, 2024, in Montgomery County, Iowa, Joseph Christopher Norris was an election official and willfully performed his duties and responsibilities as an election official in such a way as to hinder or disregard the object of the law in violation of Iowa Code sections 39A.2(1)(g) and 39A.2(2). (A class “D” felony).

(D0008). Iowa Code § 39A.2(1)(g) was enacted in 2021¹ and, as relevant, provides:

A person commits the crime of election misconduct in the first degree if the person willfully As an election official, . . . performs those duties and responsibilities [prescribed by chapters 39 through 53, except for section 48A.41] in such a way as to hinder or disregard the object of the law.

¹ Acts 2021 (89 G.A.) ch. 12, S.F. 413, § 3, eff. March 8, 2021.

Mr. Norris is criminally charged in relation to his service on the Absentee and Special Voters Precinct Board (“Absentee Board”) for the 2024 general election. Mr. Norris was one of a group of six individuals recruited by the Montgomery County Auditor, Jill Ozuna, to count the absentee ballots submitted by mail. Mr. Norris is a local business owner who is active in his community. Prior to accepting the invitation to join the 2024 Absentee Board, he had served on the 2023 Post-Election Audit Committee for Montgomery County, which conducted an after-the-fact review of election procedures to certify their compliance with law. The 2024 general election was Mr. Norris’s first time serving on the Absentee Board.

FACTS

The State’s witnesses have been deposed, and each and every one confirmed that Mr. Norris did nothing more than ask questions about the applicable process and voice objection to various procedures followed by the Auditor and the Absentee Board.

The Board members were provided no training by the Auditor, other than being emailed a copy of the Absentee and Special Voters Precinct Board Guide authored by the Secretary of State. (Appx 5). The Auditor did not personally participate in counting absentee ballots, but was available throughout the day to answer any questions. (Appx 149 (J. Lester DT 11:13–12:9); Appx 200 (J. Rubey DT 12:17–22)). The Auditor is not always present in the room during the counting. (*Id.*).

Mr. Norris was the only member of the Board who brought his guidebook to the count on November 5, 2024. Even the Auditor did not bring a copy of the guidebook to the counting room. (Appx 66 (Ozuna DT 66:6–10)). The Auditor noticed that Mr. Norris had printed and brought his copy and “commended the fact that he even had things highlighted.” (Appx 55 (Ozuna DT 25:22–26:3)).

The morning of the count, Mr. Norris made a suggestion to the Board that they change how they opened the absentee ballot envelopes, in order to ensure the secrecy of the votes. (Appx 195 (J. Rubey DT 7:25:8–9)). The Board thought “that was a really good idea, and so we changed that way we did it.” (*Id.*; Appx 2).

Mr. Norris’s other suggestions regarding procedures were not, however, so well received. He asked questions throughout the day regarding protocol and the applicable rules. The Auditor and at least some of the Board members found these questions bothersome; they believed Mr. Norris’s questions slowed down their work. (Appx 72 (Ozuna 42:4–13); Appx 200 (J. Rubey DT 12:4–10, 25:6–19); Appx 157 (J. Lester DT 19:8–12)).

One of the Board members (not Mr. Norris) accidentally hit the wrong button on the scanning machine, which caused the vote count to become inaccurate. (Appx 68–70, 72–73 (Ozuna DT 38:9–40:13, 42:22–43:13)). Shortly before lunch, the Auditor went to her office and called tech support in order to determine how to handle the situation. (Appx 72–73 (Ozuna DT 42:22–43:13)).

It was agreed upon in advance that Mr. Norris would leave over the lunch hour for another commitment. (Appx 26; Appx 28–30; Appx 77 (Ozuna DT 47:12–24)). The Auditor had informed the rest of the Board via email: “Joey has a meeting from 12-1 so, that may be a great time to break for lunch. The plan is to continue after lunch to get through the batch of absentee ballots....” (Appx 26). It was up to the Board whether to break for lunch. (Appx 78 (Ozuna DT 48:4–9)).

Mr. Norris was under the impression that, while he was gone over the lunch hour, the Board would be out of party balance and would not be able to continue its work without

him. (Appx 206–07 (J. Rubey 18:17–19:11); Appx 3). The guidebook for the Board instructs: “In a partisan election, the board as a whole must have an equal number of Democrats, Republicans, and no-party or NPPO affiliated PEOs. The board cannot be out of balance by more than one.” (Appx 9). Mr. Norris sought to comply with the rules by asking the Board to pause the count while he was gone. (Appx 3). The other Board members thought, “it’s not a big deal,” so they went along with Mr. Norris’s request. (Appx 207–08 (J. Rubey DT 19:12–14, 20:3–6)).

While the Auditor was upstairs in her office, the Board members vacated the counting room for the lunch hour. (Appx 72–73 (Ozuna DT 42:22–43:6)). The door was shut, which locked automatically. (Appx 73 (Ozuna DT 43:22–25)). This is consistent with what the Board has done in years past. (Appx 153 (J. Lester DT 15:21–25); Appx 176–77 (W. Lester DT 9:23–10:11)). The Board would stop for lunch, leave the building, and lock the door so the ballots were safe. (Appx 176–77 (W. Lester 9:23–10:11); Appx 153 (J. Lester DT 15:21–16:5)).

The Auditor returned to the counting room shortly after the Board had vacated it. (Appx 72–73 (Ozuna DT 42:22–43:2)). The Auditor disagreed with the decision to stop counting over the lunch hour. (Appx 74 (Ozuna DT 44:12–17)). She had the ability to open the room so the counting could resume, but the remaining Board members opted not to resume until Mr. Norris returned. (Appx 74–75 (Ozuna DT 44:1–45:14)).

Tech support had advised the Auditor that the count would have to be completely restarted in order to correct the miscounting error. (Appx 68–70, 72–73 (Ozuna DT 38:9–40:13, 42:22–43:13)). In other words, the Board had to re-scan all of the votes that they had already processed between 9:00am and 12:00pm. (Appx 91–92 (Ozuna DT 61:18–

62:2)). Two Board members worked the scanner, while the rest of the Board sat and waited. There were 8 boxes of ballots, total, and by 3:00pm the Board was still only on the 1st or 2nd box. (Appx 2–3).

One recurrent disagreement between Mr. Norris and the Auditor was how provisionally rejected ballots should be handled. (Appx 80–81 (Ozuna DT 50:6–11, 51:4–8)). The Board rejected ballots if they were unsealed or unsigned; those rejected ballots were placed into a tote. (Appx 60–61 (Ozuna DT 30:14–31:3)). Mr. Norris wanted to allow the observers in the room (there were two: one Democrat and one Republican) to see the voter names on those ballots, so the observers could then attempt to contact those people and alert them that they needed to fix their ballot before 8:00pm in order for their votes to be counted. (Appx 62–64 (Ozuna DT 32:9–24, 33:15–34:8)). Ozuna insisted that these voters could not be contacted until after the Board had completed counting all of the ballots. (Appx 62, 81 (Ozuna 32:9–24, 51:4–11)).

Around 3:20pm, the Auditor removed Mr. Norris from the Absentee Board because he continued to argue with her about providing earlier notice to the voters who had submitted flawed absentee ballots. (Appx 84–85 (Ozuna DT 54:25–55:14)). The Auditor accused Mr. Norris of being disruptive, to which Mr. Norris responded, “being disruptive because he wanted to do it right?” (Appx 4). The Auditor called the sheriff to remove Mr. Norris. (Appx 4). Mr. Norris left voluntarily when deputies arrived. He did not participate in the remainder of the count and certification.

All of the witnesses confirmed that Mr. Norris never did anything physical; his conduct was solely verbal. (Appx 203 (J. Rubey 15:9–12), Appx 86 (Ozuna DT 56:3–4), Appx 160 (J. Lester DT 22:2–11)). Mr. Norris never used any expletives. (Appx 97 (Ozuna

DT 67:24–25); Appx 203 (J. Rubey DT 15:5–8), Appx 160 (J. Lester DT 22:6–8)). A fellow Board member described Mr. Norris as “exuberant and really excited and just wouldn’t stop with the questions.” (Appx 213 (J. Rubey DT 25:6–8)). Mr. Norris did not shout or raise his voice. (Appx 160 (J. Lester DT 22:12–15)). The Auditor characterized his tone as “not loud.” (Appx 97 (Ozuna DT 67:7–8)). The Auditor complained, though, that he asked the same question repeatedly when he disagreed with her answer. (Appx 97 (Ozuna DT 67:11–21)). All of the questions Mr. Norris asked pertained to “what the procedures were.” (Appx 203 (J. Rubey DT 15:13–16)).

Mr. Norris did not have any authority over anyone on the Board; he could not make them do anything. (Appx 91 (Ozuna DT 61:9–17)). He could only verbally advocate for what he believed to be the correct procedures, and it was up to the other Board members and the Auditor whether to accept his position. (See *id.*).

THIS PROSECUTION VIOLATES MR. NORRIS’S CONSTITUTIONAL RIGHTS

As one Board member volunteered during depositions, “I do not think Joey did anything criminally wrong, and I will stand in court and say that because he didn’t. . . . The whole thing that he was charged is crazy. It’s just crazy.” (J. Rubey DT 27:2–16). That Board member is correct. This prosecution *is* crazy. It plainly violates Mr. Norris’s right to free speech and due process. This Court should therefore dismiss the charge.

I. The charge violates Mr. Norris’s First Amendment right to free speech

The charge against Mr. Norris is based on nothing more than his verbal conduct as a member of the Absentee Board. The Government essentially complains that Mr. Norris cared *too much* about following the rules. For the reasons set forth below, the charge must be dismissed because it violates Mr. Norris’s right to free speech and due process under the state and federal constitutions.

To succeed on this as-applied challenge, Mr. Norris must only show that the charges are unconstitutional in the context of his particular set of facts. See *Doss v. State*, 961 N.W.2d 701, 716 (Iowa 2021). He need not prove that “no application of the statute could be constitutional under any set of facts.” *Id.* (emphasis added); accord *United States v. Adams*, 914 F.3d 602, 605 (8th Cir. 2019).

This prosecution runs counter to fundamental First Amendment principles. “A citizen’s right to exercise First Amendment freedoms ‘without facing retaliation from government officials is clearly established.’” *Baribeau v. City of Minneapolis*, 596 F.3d 465, 481 (8th Cir. 2010). The freedom to challenge governmental actors “without thereby risking arrest is one of the principal characteristics by which we distinguish a free nation from a police state.” *City of Houston, Tex. v. Hill*, 107 S. Ct. 2502, 2510 (1987). It is “fundamental that a lawful arrest may not ensue where the arrestee is merely exercising his First Amendment rights.” *Gainor v. Rogers*, 973 F.2d 1379, 1387 (8th Cir. 1992).

Mr. Norris’s speech is core First Amendment expression because he was challenging the Auditor, an elected official, about an incredibly important issue, the propriety of election procedures. “[S]peech about government and its officers, about how well or badly they carry out their duties, lies at the very heart of the First Amendment.” *Janklow v. Newsweek, Inc.*, 788 F.2d 1300, 1304 (8th Cir. 1986). In our democracy, “[i]t is as much [the citizen’s] duty to criticize as it is the official’s duty to administer . . . ‘the censorial power is in the people over the Government, and not in the Government over the people.’” *New York Times v. Sullivan*, 376 U.S. 254, 282 (1964) (quoting James Madison in 4 Annals of Congress, p. 934 (1794)). Accordingly, “core political speech occupies the highest, most protected position” in the “rough hierarchy [of] constitutional

protection of speech.” *R.A.V. v. City of St. Paul*, 505 U.S. 377, 422 (1992) (Stevens, J., concurring in the judgment).

The Auditor, in particular, did not appreciate being challenged as to the applicable procedures. But “[a]mong public figures and officials, an added layer of toughness is expected.” *Bertrand v. Mullin*, 846 N.W.2d 884, 901–02 (Iowa 2014). The State cannot criminally charge Mr. Norris simply because he annoyed the Auditor and other Board members by insisting that the rules—as written in the Secretary of State’s own guidebook—be followed.

Particularly concerning is the fact that Mr. Norris was correct about many of the concerns he raised. For instance, the main point of contention between Mr. Norris and the Auditor was the delay in notifying voters whose absentee ballots were flawed, in order to give those voters the opportunity to correct the flaws and have their votes counted. (Ozuna DT 50:6–11, 51:4–8). Mr. Norris wanted to give the election observers the names of the individuals whose ballots had been provisionally rejected, so that the observers could contact the individuals. (Ozuna DT 32:9–24, 33:15–34:8). The Auditor refused to allow Mr. Norris to do so, (Ozuna 32:9–24, 51:4–11), even though the Secretary of State guidebook specifically states, “Observers may report the names of voters whose ballots were rejected without being opened. This is not a violation of the secrecy required for the progress of the count.” (Appx 12–13).

The Auditor did not contact the voters with defective ballots until at least 6:45pm. (Ozuna DT 53:14–23). Those voters were given only until 8:00pm to correct the defects. (Ozuna DT 33:15–34:8). Unfortunately, several ballots were rejected at the end of the count due to defects. (Ozuna DT 54:6–10; Appx 3). This was exactly the result that Mr.

Norris wanted to avoid. Had the observers been allowed to contact those voters earlier in the day, perhaps those defects would have been corrected and the votes would have been counted in the election.

Mr. Norris did nothing more than voice his opinion. Prosecuting him for it violates the First Amendment, and the charge must be dismissed. *See State v. Fratzke*, 446 N.W.2d 781, 785 (Iowa 1989) (dismissing harassment charge on First Amendment grounds, noting “so long as a lawful purpose for the communication exists, no language short of ‘fighting words’ may serve to defeat or criminalize the sender’s message”).

II. The charge violates Mr. Norris’s Due Process rights

In addition to violating Mr. Norris’s right to free speech, the charges are unconstitutionally vague and overbroad, in violation of the due process clauses of both federal and state constitutions. U.S. CONST. amend. XIV; IOWA CONST. art. I, § 9; *F.C.C. v. Fox TV Stations, Inc.*, 567 U.S. 239, 253 (2012) (recognizing Due Process “requires the invalidation of laws that are impermissibly vague”).

“Due process is designed to ensure fundamental fairness in interactions between individuals and the state.” *State v. Nail*, 743 N.W.2d 535, 539 (Iowa 2007). Among other things, the Due Process Clause prohibits enforcement of vague statutes. *Id.* There are three components of this constitutional doctrine:

First, a statute cannot be so vague that it does not give persons of ordinary understanding fair notice that certain conduct is prohibited. Second, due process requires that statutes provide those clothed with authority sufficient guidance to prevent the exercise of power in an arbitrary or discriminatory fashion. Third, a statute cannot sweep so broadly as to prohibit substantial amounts of constitutionally-protected activities, such as speech protected under the First Amendment.

Id.; see also *Grayned v. City of Rockford*, 408 U.S. 104, 108-09 (1972).

"When speech is involved, rigorous adherence to those requirements is necessary to ensure that ambiguity does not chill protected speech." *F.C.C.*, 567 U.S. at 253–54.

A law's failure to provide fair notice of what constitutes a violation is a special concern where laws "abut upon sensitive areas of basic First Amendment freedoms" because it "inhibits the exercise" of freedom of expression and "inevitably leads citizens to steer far wider of the unlawful zone than if the boundaries of the forbidden areas were clearly marked."

Stahl v. City of St. Louis, Mo., 687 F.3d 1038, 1041–42 (8th Cir. 2012) (*quoting Grayned*, 408 U.S. at 109 (cleaned up)). An overbroad statute that "threaten[s] to inhibit the exercise of constitutional rights receive[s] a more stringent vagueness analysis." *State v. Baker*, 688 N.W.2d 250, 255 (Iowa 2004). A law inhibiting the exercise of First Amendment rights may be deemed facially overbroad "if the impermissible applications of the law are substantial when judged in relation to the statute's plainly legitimate sweep." *Musser v. Mapes*, 718 F.3d 996, 1001 (8th Cir. 2013) (cleaned up).

In this case, Mr. Norris did not have fair notice that his speech was prohibited because the proscribed conduct was not included, either explicitly or implicitly, in the language of Iowa Code § 39A.2(1)(g). "[B]ecause we assume that man is free to steer between lawful and unlawful conduct, we insist that laws give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly." *Grayned*, 408 U.S. at 108. Vague laws offend the due process clause because they impermissibly require individuals to speculate "at peril of life, liberty[,] or property. . . as to the meaning of penal statutes." *Lanzetta v. New Jersey*, 306 U.S. 451, 453 (1939).

Here, the statute's application to Mr. Norris's conduct was not "reasonably ascertainable" by consulting prior judicial decisions, similar statutes, the dictionary, or common generally accepted language. *Baker*, 688 N.W.2d at 255. Iowa Code §

39A.2(1)(g) is new to the Iowa Code and has never been interpreted by the courts. “Hinder” and “disregard” are not defined in chapter 39A or the statutes governing elections. Nor is “the object of the law” defined anywhere. A reasonable person reading the statute certainly would not understand that the statute prohibited verbal speech challenging perceived flaws in election procedure.

The vagueness doctrine represents not only a requirement of notice, but “the requirement that a legislature establish minimal guidelines to govern law enforcement.” *Smith v. Goguen*, 415 U.S. 566, 574 (1974). When a statute is overbroad or unconstitutionally vague, the result is a “standardless sweep [that] allows policemen, prosecutors, and juries to pursue their personal predilections.” *Id.* at 575.

The timing of these charges, nearly two years after the alleged conduct and only months before the 2026 midterm elections, raises serious concerns about this prosecution being nothing more than the “personal predilection” of Attorney General Brenna Bird. Given the charge’s complete lack of merit, reasonable questions arise as to whether Mr. Norris was targeted for prosecution simply because he participated on the Absentee Board as a registered Democrat. *F.C.C.*, 132 S. Ct. at 2317 (“[P]recision and guidance are necessary so that those enforcing the law do not act in an arbitrary or discriminatory way.”); *City of Maquoketa v. Russell*, 484 N.W.2d 179, 185 (Iowa 1992) (finding statute overbroad because “too much opportunity arises for selective enforcement”). At the very least, this charge is a way for the Auditor to ensure that no one questions her authority in the future.

The charges against Mr. Norris highlight the dangers of overbroad statutes. Mr. Norris exercised his right to free speech when he challenged the Auditor’s procedures

regarding the absentee ballot count. He now faces criminal charges for that protected political speech. The officer who “investigated” this case, Deputy Askey, testified that he believes someone can be criminally prosecuted under this statute, even if all the person did was “talking about the election itself and how it should be happening and objecting to things that were going on.” (Appx 130 (Askey DT 28:19–29:2)).

That cannot be sanctioned under the First Amendment. If this prosecution were allowed to proceed, it would chill others from speaking up to protect election integrity. It has undoubtedly soured Mr. Norris on serving in Montgomery County's election administration again. No person should be accused of a crime, their reputation tattered in their community, for speaking up in defense of election integrity.

The violation of Mr. Norris's Due Process rights independently requires dismissal of this case. The risk of Iowa Code § 39A.2(1)(g) inhibiting the exercise of First Amendment rights is substantial when weighed against the legitimate purposes of the statute. See *City of Chicago v. Morales*, 527 U.S. 41, 52 (1999). This prosecution itself demonstrates that Iowa Code § 39A.2(1)(g) “reach[es] a substantial amount of innocent conduct.” *Id.* The Court therefore should find Iowa Code § 39A.2(1)(g) unconstitutionally vague and overbroad and strike down or judicially narrow the statute. See *State v. Nail*, 743 N.W.2d 535, 540 (Iowa 2007) (recognizing “definitive judicial gloss can save a statute from void-for-vagueness infirmity”).

CONCLUSION

Criminalizing Mr. Norris's speech “would be equivalent to finding that the First Amendment's promises are not worth the paper they are written on.” *State v. Fratzke*, 446 N.W.2d 781, 785 (Iowa 1989). This Court should rule the charge is unconstitutional

as applied to Mr. Norris, and find Iowa Code § 39A.2(1)(g) unconstitutionally vague and overbroad. Mr. Norris accordingly asks that the Court dismiss the charge against him.

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