

**IN THE IOWA HOUSE OF REPRESENTATIVES
CONTEST COMMITTEE**

KAYLA KOETHER,
Contestant,

v.

MICHAEL BERGAN,
Incumbent.

CONTESTANT KAYLA KOETHER'S
BRIEF IN SUPPORT OF HER CONTEST OF
IOWA HOUSE DISTRICT 55

I. INTRODUCTION

This Contest of the Iowa House District 55 (“HD55”) election between Kayla Koether (“Ms. Koether”) and Representative Michael Bergan (“Mr. Bergan”) comes down to twenty-nine vote-by-mail ballots in Winneshiek County that were validly cast, but have not been counted. This should not be a partisan issue. The votes include a split of Republicans, Democrats and No Parties. These twenty-nine ballots should be counted because they were cast by eligible voters who followed all applicable laws and placed their ballots in the federal mail system by the deadline prescribed in the Iowa Code. These twenty-nine ballots should be counted because they may change the outcome of the HD55 election, given that just nine votes separate the candidates.

II. BACKGROUND

Almost 14,000 voters cast ballots in the HD55 election. By the end of the counting on Election Day, November 6, 2018 (“Election Day”), Mr. Bergan led by just 7 votes out of almost 14,000. However, under Iowa law, Election Day is not the end of receiving or counting ballots. Ballots that are received by the County Auditor prior to the conclusion of the canvass the following week may be counted if they were placed in the mail prior to Election Day. IOWA CODE § 53.17(2) (2018). After Election Day and prior to the conclusion of the county canvass of the votes, the Winneshiek County Auditor received via the United States Postal Service

(“USPS”) absentee ballots from thirty-three additional HD55 voters. The USPS and the Winneshiek County Auditor have confirmed that twenty-nine of these ballots were placed into the federal mail system prior to Election Day, making them valid votes in accordance with Iowa law.¹ *See* Report to Court, filed by Auditor Steines on Dec. 5, 2018.

The twenty-nine ballots are legally cast votes that conform with Iowa law. However, the Winneshiek Absentee and Special Voters Precinct Board was instructed by the Winneshiek County Auditor and the Iowa Secretary of State not to count them. The Secretary of State contends the ballots were invalid due to their lack of postmarks, despite the fact the ballots bore a barcode which can be used to discover (and has been used to discover) the date the ballots were placed in the mail. This use of a barcode in place of a postmark is specifically contemplated in the Iowa Code. IOWA CODE § 53.17(2) (2018). Instead of applying that Iowa statutory provision, the Secretary of State instructed the Winneshiek County Auditor to disregard Iowa law and not count the ballots. Even after reading the USPS barcodes determining that each ballot had entered the federal mail system before Election Day, the ballots have still not been counted. The voters’ right to have their lawful votes counted is the basis of this Contest.

To exacerbate the problem, voters in HD55 living in different counties are being treated differently resulting in an Equal Protection violation. HD55 includes parts of Winneshiek, Clayton, and Fayette counties. The Fayette County Auditor counted twenty-five HD55 ballots received after Election Day, twelve of which were not confirmed to be mailed timely. The Fayette County Auditor took all ballots received after Election Day, without confirming the date they were placed into the federal mail system, and counted them all. Approximately twelve ballots did not have stamp-canceling postmarks, and the Fayette County Auditor did not use the

¹ Ms. Koether has requested clarification regarding the information obtained, but for the purposes of this Brief will rely upon the representation that there were twenty-nine validly cast ballots.

intelligent mail barcode to confirm when they were mailed—they simply counted them all, directly opposite of what has been done in Winneshiek County. The counting of the un-postmarked Fayette County ballots resulted in a net of two votes for Mr. Bergan. There has been a complete lack of concern about the fact that Mr. Bergan has netted two votes from ballots that were un-postmarked. However, every step of the way, the twenty-nine validly cast Winneshiek County votes have been blocked.² Voters in Winneshiek County have the same right to have their vote counted in the HD55 election as the voters in Fayette County, but their right has been denied.³

On November 13, 2018, the Winneshiek County Board of Supervisors certified the total counted votes in the HD55 election with a nine-vote difference: 6,924 votes for Michael Bergan and 6,915 votes for Kayla Koether, not including the uncounted twenty-nine votes. Mr. Bergan and Ms. Koether are only nine votes apart and there are twenty-nine validly cast ballots unopened and uncounted.

The Iowa Constitution and Iowa Code outline voting rights and rules. The Contest Committee must uphold Iowa law and open and count the twenty-nine ballots. This Contest is brought on behalf of the voters of HD55 and should not be a partisan issue. All Iowa voters have a right for their validly-cast votes to be counted, and Ms. Koether has the right to request that the Contest Committee follow the statutory contest procedures to open and count the twenty-nine

² It is worth noting that the content of the uncounted ballots has not been established by the Winneshiek County Auditor or the Iowa Secretary of State, as those ballots have not been opened.

³ In addition to the absentee ballots received after Election Day, there is another Winneshiek County ballot for which there is no accounting. Ms. Bouthsakone McCain would testify that she voted her ballot and her mother delivered the ballot to the Winneshiek County Auditor's Office prior to Election Day. However, the office does not have record of the ballot. Testimony would show that someone on the courthouse staff assisted her in finding the Auditor's office and she can identify the woman on the Auditor's staff who accepted the ballot. This ballot remains unaccounted for and would alter the vote total in HD55.

ballots.

III. ARGUMENTS

A. THE TWENTY-NINE VOTERS COMPLIED WITH THE LAW, AND THE RULE OF LAW REQUIRES THAT THE BALLOTS BE COUNTED.

Voting is a fundamental right, guaranteed by both the United States and Iowa Constitutions. *Chiodo v. Section 43.24 Panel*, 846 N.W.2d 845, 848 (Iowa 2014) (citing *Devine v. Wonderlich*, 268 N.W.2d 620, 623 (Iowa 1978)). “It 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. The right to vote is found at the heart of representative government and is ‘preservative of other basic civil and political rights.’” *Chiodo*, 846 N.W.2d at 848 (citing *Wesberry v. Sanders*, 376 U.S. 1, 17 (1964); *Reynolds v. Sims*, 377 U.S. 533, 562 (1964); accord *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886)). If the voter follows the voting laws, then his or her vote should be counted. All voters should be treated equally. Here, twenty-nine voters are being treated differently, and by refusing to count their votes, the government is knowingly and intentionally disenfranchising those voters.

Iowa is a representative democracy, and the point at which we deny voters the right to have their validly cast ballots counted, we undermine our democracy. Governments and individuals enter a social contract where individuals surrender some freedoms to the government in exchange for protection of their remaining rights. In Iowa, we respect the rule of law and the social contract with Iowa citizens.

These twenty-nine Winneshiek County voters followed the law and held up their end of the contract. The fact that their ballots were received after Election Day does not invalidate the voters’ actions. Suggesting that this Contest will lead to ballots being returned weeks later is

hyperbolic partisan grandstanding. Some have also suggested that these voters should have voted earlier or in person, but blaming the voters undermines the rule of law and decency—especially when these voters’ actions were well within the letter of the law.

Iowa law is clear on the dates and parameters with regard to casting a ballot in an Iowa election. Any registered voter may vote in the General Election by absentee ballot. IOWA CODE § 53.1 (2018). The law requires that “[i]n order for the ballot to be counted, the return envelope must be received in the commissioner’s office before the polls close on Election Day or be clearly postmarked by an officially authorized postal service or bear an intelligent mail barcode traceable to a date of entry into the federal mail system 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) (2018).

These twenty-nine voters are being punished because they do not live closer to a postal hub, because the ballots were not delivered prior to Election Day, and because the USPS did not use a stamp-canceling postmark on the ballots. None of these facts, however, renders their ballots in violation of Iowa election law. The Winneshiek County Auditor has confirmed through review of the intelligent mail barcode for each ballot that they were timely placed in the mail. These twenty-nine voters did what they were supposed to do: they voted and they put their ballots into the federal mail system before Election Day. Their fundamental right to vote should not be denied by this Committee. This Contest Committee must follow Iowa law and open and count the ballots.

B. THE CONTEST COMMITTEE MUST HONOR THE 2016 AMENDMENTS TO THE IOWA CODE ALLOWING FOR AN ADDITIONAL WAY TO VERIFY WHEN BALLOTS WERE MAILED.

The twenty-nine ballots should be counted because they each bear an intelligent mail

barcode showing that they were timely mailed, as specifically contemplated in Iowa law. In May 2016, the Iowa Legislature worked to ensure that as many votes as possible would count. The Legislature acknowledged that the USPS often did not postmark ballots because they were postage paid and were too thick to run through the machines. *See* Postmarks, USPS, https://about.usps.com/handbooks/po408/ch1_003.htm. Most often the USPS would not postmark the ballots, but the ballots always had barcodes—because all mail is marked with barcodes for tracking regardless of its size or thickness. The barcodes have been used by the USPS for decades to track and sort mail. The barcodes contain a significant amount of identifying information regarding each piece of mail, including the date each piece was placed into the custody of the federal mail system. *See* Intelligent Mail, USPS, https://about.usps.com/postal-bulletin/2010/pb22277/html/info_005.htm.

In 2016, the Iowa Legislature recognized that while ballots were infrequently postmarked, the barcode could serve the same purpose as a postmark. The 2016 Legislature amended the Iowa Code to allow the use of an “intelligent mail barcode” to determine the date a ballot was placed in the mail. This change to the Iowa Code in 2016 did not change the relevant dates—ballots must still be placed into the federal mail system by the day before the election, and they must be received prior to the close of the canvass (which is set on the Monday or Tuesday following Election Day). However, the amendment did allow the intelligent mail barcode to be used in place of a postmark to verify when ballots were placed into the federal mail system. The Legislature amended the Iowa Code in four places to include postmark or “intelligent mail barcode”—three times in Section 53.17 and once in Section 53.22. *See* Iowa Code §§ 53.17(1)(b), 53.17(2), 53.17(4)(f), and 53.22(6)(b) (2018). Each time the words “intelligent mail barcode” are used, they say the exact same thing (aside from tense):

... postmarked or, if applicable, to have the intelligent mail barcode traced to a date of entry into the federal mail system not later than the day before the election, whichever is earlier. IOWA CODE § 53.17(1)(b) (2018).

...postmarked by an officially authorized postal service or bear an intelligent mail barcode traceable to a date of entry into the federal mail system 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) (2018).

...postmarked or, if applicable, to have the intelligent mail barcode traced to a date of entry into the federal mail system not later than the day before the election, whichever is earlier. IOWA CODE § 53.17(4)(f) (2018).

...postmarked by an officially authorized postal service or bear an intelligent mail barcode traceable to a date of entry into the federal mail system not later than the day before the election and received by the commissioner no later than the time established for the canvass by the board of supervisors for that election. IOWA CODE § 53.22(6)(b) (2018).

Like the postmark, the sole use of the barcode for election purposes is to determine when a piece of mail was sent by the voter. The barcodes on the twenty-nine ballot return envelopes at issue in this Contest contain the necessary information, and the USPS and the Winneshiek County Auditor have confirmed that the twenty-nine ballots were timely mailed. Using the barcode to determine a ballot's mailing date in the case of a missing postmark was clearly the intent of the 2016 amendment. These twenty-nine timely-mailed ballots should be opened and counted. Any reading of the law precluding the counting of the ballots nullifies the 2016 amendment.

C. THE IOWA CODE SHOULD NOT BE INTERPRETED NARROWLY TO ONLY INCLUDE THE “INTELLIGENT MAIL BARCODE TRACING®” PROGRAM.

The twenty-nine votes should be counted because the barcodes on the ballot return envelopes meet the definition and purpose of the barcode law. Rather than promoting an expansive right to vote, the Iowa Secretary of State and opponents of counting validly cast ballots have sought to use the barcode amendment to disenfranchise certain voters. They have

ignored the purpose of the amendment: providing another way to verify the date a ballot was mailed. Opponents of counting the ballots incorrectly continue to rely on the Iowa Administrative Code to restrict application of the Iowa Code. Specifically, opponents maintain that the Iowa Code actually refers specifically to Intelligent Mail Barcode Tracing® (“IMb Tracing®”), a program in which counties can elect to participate that gives counties a discount on postage and the ability to track barcodes with a system in their offices. Additionally, opponents argue that the program existed when this law was passed in 2016 so the law must have been intended to refer to the IMb Tracing® program. However, the statutory language used in the Iowa Code does not give any indication that the words “intelligent mail barcode” were meant so narrowly or are referencing that specific program. The rules of statutory construction simply do not support such a narrow interpretation.

The Iowa Secretary of State may not rely on its own administrative rule to override the language of a statute. On July 15, 2016, the Iowa Secretary of State adopted an emergency rule regarding intelligent mail barcodes titled “Intelligent Mail barcode (IMb) Tracing®”. *See* IOWA ADMIN. R. 721—21.14(53). The rule was passed without notice or public comment. It applies to a specific tracing system which County Auditors may implement but are not required to use. The Iowa Secretary of State continues to assert the Iowa Code language refers only to the IMb Tracing® system and that “intelligent mail barcode” is a technical term of art used by the USPS. However, this argument is contradictory and collapses because terms of art must be specifically defined in the Iowa Code. *State v. Kellogg*, 542 N.W.2d 514, 516 (Iowa 1996). There is no definition of “intelligent mail barcode,” and Iowa Administrative Code cannot change the meaning of or narrow the application of Iowa Code. *Nishnabotna Valley Rural Elec. Co-op v. Iowa Power & Light Co.*, 161 N.W.2d 348, 352 (Iowa 1968) (citing *Consolidated Freightways*

Corp. of Delaware v. Nicholas, 137 N.W.2d 900 (Iowa 1965). “...[I]t must be remembered that the plain provisions of the statute cannot be altered by an administrative rule or regulation, no matter how long it has existed or been exercised by administrative authority....To permit a commission or board to change the law by giving to the statute or Act an interpretation or construction of which its words are not susceptible would be a departure from the meaning expressed by the words of the statute.” *Id.* (citing *Clarion Ready Mixed Concrete Co. v. Iowa State Tax Commission*, 107 N.W.2d 553, 558 (Iowa 1961); *Hindman v. Reaser*, 72 N.W.2d 559 (Iowa 1955)).

Furthermore, as of February 1, 2018, the IMb Tracing® system was retired, and the USPS is migrating to Informed Visibility®. See USPS DMM Revision: Intelligent Mail Barcode Tracing® Migrated to Informed Visibility, https://about.usps.com/postal-bulletin/2018/pb22486/html/updt_002.htm. With the Iowa Secretary of State’s interpretation, the Iowa Code would now be without meaning since IMb Tracing® has changed its name. Rather than accepting the Secretary of State’s strained and unsupported contention regarding IMb Tracing, the Contest Committee should look at the barcodes which confirm the twenty-nine ballots were timely mailed and determine these barcodes meet the plain language of the Iowa Code.

D. STATUTORY INTERPRETATION REQUIRES COUNTING THE TWENTY-NINE BALLOTS.

Counting the twenty-nine ballots is the only just and reasonable interpretation of the 2016 barcode amendment. Iowa Courts have consistently held the first objective is to determine what the Legislature intended when drafting the statute at issue. *Myria Holdings, Inc. v. Iowa Dep’t of Revenue*, 892 N.W.2d 343, 348 (Iowa 2017) (citing *Branstad v. State ex rel. Nat. Res. Comm’n*, 871 N.W.2d 291, 295 (Iowa 2015)). However, before looking to the intent of the Legislature, the

interpretation of a statute begins with the specific language used by the Legislature when drafting the statute. *Myria Holdings*, 892 N.W.2d at 348 (citing *Des Moines Flying Serv., Inc. v. Aerial Servs. Inc.*, 880 N.W.2d 212, 220 (Iowa 2016)). If a word is not defined in the Iowa Code, then it is to be defined using its “common, ordinary meaning” *Myria Holdings*, 892 N.W.2d at 348 (citing *Bank of Am., N.A. v. Schulte*, 843 N.W.2d 876, 880 (Iowa 2014)). Further, terms that are generally understood do not need to be defined in statute, but “technical terms or legal terms of art must be explained.” *Kellogg*, 542 N.W.2d at 516.

An “intelligent mail barcode” should be interpreted to include any barcode that is able to be traced to the time and date the ballot was placed into the federal mail system. When in doubt, a statute should be construed to allow more people to exercise their fundamental right to vote, not unreasonably restrict that fundamental right. *Younker v. Susong*, 156 N.W. 24, 29 (Iowa 1916) (stating statutes should not be given a “too narrow or strict construction which would defeat the right [] to vote, but rather a liberal construction in order that the purpose of the Legislature may be carried out”).

The claim that the Iowa Code amendments must refer to the IMb Tracing program contradicts statutory interpretation. Given that Iowa Code does not reference the USPS Regulation and there is no definition of the term “intelligent mail barcode” in the Iowa Code, it must be given its plain meaning, rather than a special meaning. *See Kellogg*, 542 N.W.2d at 516. The words “intelligent,” “mail,” and “barcode” all have plain meanings within the English language and should be interpreted with those meanings. Words with a common and ordinary meaning should be interpreted with that meaning unless otherwise defined. *See State v. Harrison*, 846 N.W.2d 362, 368 (citing *State v. Royer*, 632 N.W.2d 905, 908 (Iowa 2001)).

The envelopes containing the ballots in question have barcodes that include the dates that

each ballot was placed in the federal mail system. These envelopes are considered “mail” as regularly understood in the English language because they are pieces of correspondence processed by the USPS. The marking on the envelopes is considered a “barcode” by the USPS. Iowa Code section 53.17(2) should be interpreted using the plain language of the statute because the Legislature did not define the alleged *term of art* as required by Iowa law. The twenty-nine HD55 voters in Winneshiek County should not be disenfranchised simply because the Iowa Secretary of State is trying to unilaterally rewrite and narrow Iowa Code.

E. EQUAL PROTECTION MUST BE AFFORDED TO ALL ELECTORS IN HOUSE DISTRICT 55.

Unlike the twenty-nine disenfranchised voters in Winneshiek County, twelve Fayette County voters had their late-arriving ballots counted, despite the lack of a postmark. The intelligent mail barcodes on the twelve ballots were not checked, and the dates on which they were placed into the federal mail system was not verified in any way. Because voters were treated differently based on which county auditor counted their votes, there is an Equal Protection violation in the HD55 election.

Equal protection must be afforded to citizens who are similarly situated. *Varnum v. Brien*, 763 N.W.2d 862, 882 (Iowa 2009) (quoting *Racing Ass’n of Cent. Iowa v. Fitzgerald*, 675 N.W.2d 1, 7 (Iowa 2004) (citations omitted)). The counties are similarly situated because the votes in question in both Winneshiek and Fayette Counties will affect the same election. *See Varnum*, 763 N.W.2d at 883. It is apparent there is some disconnect between the practice of county auditors in Iowa with regard to whether absentee ballots should be counted or rejected. The twelve absentee voters in Fayette County were able to exercise their fundamental right to vote, regardless of when their ballot was placed in the federal mail system. On the other hand, approximately twenty-nine voters in Winneshiek County, voting in the same election, were not

able to exercise that same right to vote, despite officials knowing the voters mailed their ballots in accordance with the law.

The twenty-nine voters in Winneshiek County have the same right to have their vote counted in the HD55 election as the voters in Fayette County, but they have been denied this right with no consideration by the Winneshiek County Auditor and the Iowa Secretary of State. As election officials, county auditors and the Iowa Secretary of State have the explicit duty to carry out the Iowa Constitution and the Iowa Code to ensure that all eligible voters who follow the law are able to exercise their fundamental right to vote. This Contest Committee is now in the position to correct that error and follow Iowa law.

F. MS. KOETHER HAS THE STATUTORY RIGHT TO HAVE THE LEGALLY CAST BALLOTS OPENED IN OPEN SESSION OF THE CONTEST COMMITTEE.

This Contest Committee must hear additional evidence, specifically the tally of the twenty-nine uncounted Winneshiek County ballots. Article III, § 7 of the Iowa Constitution states “A contested election shall be determined in such a manner as directed by law.” In the State of Iowa, the Constitution is considered the Supreme Law of Iowa and is supplemented and clarified by the Iowa Code. IOWA CONST. ART. XII, § 1. Therefore, the Iowa Code sections governing Election Contests should be followed in this Contest as in previous contests. Pursuant to Iowa Code § 57.5, “[t]he parties to any contested election shall have the right, in open session of the court or tribunal trying the contest, and in the presence of the officer having them in custody, to have the ballots opened, and all errors of the precinct election officials in counting or refusing to count ballots corrected by such court or tribunal.” IOWA CODE § 57.5 (2018). Ballots may be recanvassed so long as they were preserved in a manner according to Iowa Code §§ 50.12, 53.26, and 53.30, and which “precludes a reasonable likelihood the ballots had been tampered with.” IOWA CODE §§ 50.12; 53.26; 53.30 (2018); *Wiedenheft v. Frick*, 243 Iowa 51, 54, 11 N.W.2d 561,

563 (1943). In this case, the ballots have been properly preserved in the Winneshiek County Auditor's office since Election Day. It is a violation of Iowa Code and the Iowa Constitution to refuse to allow Ms. Koether to have the election recanvassed in accordance with Iowa Code § 57.5.

Therefore, under Iowa Law, specifically Iowa Code § 57.5, this Contest Committee should allow Ms. Koether to exercise her statutory right to have the ballots in HD55 recanvassed in open session of this Committee. Furthermore, this Committee should remedy any errors made by election officials, ensure a fair hearing of all the issues presented before the committee, and protect the integrity of the voting process.

G. IF THE CONTEST COMMITTEE DOES NOT HEAR EVIDENCE, MS. KOETHER WILL NOT HAVE RECEIVED DUE PROCESS IN VIOLATION OF THE UNITED STATES AND IOWA CONSTITUTIONS.

The Iowa Constitution gives persons the right to Due Process in civil proceedings. IOWA CONST. ART. I, § 9. The Iowa Constitution further gives candidates for public office the right to contest an election if the results or process are questioned. IOWA CONST. ART. III, § 7. Refusing Ms. Koether the opportunity to present evidence deprives her of her right to Due Process of Law under the Iowa Constitution. *In the Interest of A.M.H.*, 516 N.W.2d 867, 870 (Iowa 1994) (stating a fundamental component of due process is the opportunity to be heard).

The right to Due Process historically has been construed by Iowa courts to allow the parties to a case or controversy to provide evidence to the tribunal trying the case in order to give a full and fair picture of the issues before the tribunal. *Id.* The laws already provide for parties to contest the Election, and this Committee cannot limit Ms. Koether's constitutional rights. The role of this Committee is to make a fair determination of the outcome of the case.

Oral arguments from counsel are not evidence. Oral arguments are simply an overview of

the issues in a case from the attorney's point of view. Without a record of evidence comprised of exhibits and testimony from witnesses, the record in front of the Committee is only hearsay and facts not proven to be accurate or reliable. Without creating a record of evidence, including testimony, this Committee will be unable to make a fully informed, impartial decision because the decision will be based on the attorneys' views of the facts and information. Oral arguments are not intended to be the only evidence a tribunal hears. Oral arguments are intended to be based on the record of evidence presented. Due process allows for the parties to not only present their own evidence, but to refute and contradict the opposing party's evidence to allow the tribunal to make a full and impartial decision on the case or controversy.

The evidence presented must also be recorded by a certified court reporter to preserve the evidence. Failing to have the testimony recorded by a court reporter will fail to preserve the record, thereby preventing either party from exercising his or her right to appeal this Committee's decision to the Iowa District Court as stated in Iowa Law, should it become necessary to do so. Iowa Code § 62.20 gives the party against whom an adverse judgment is rendered the right to appeal to the Iowa District Court within twenty days of the Committee's decision. IOWA CODE § 62.20 (2018) (incorporated into this Contest by Iowa Code § 57.6). As there is a clear statutory provision in the Iowa Code that allows the right to appeal, this Committee has the duty to hear evidence and record it properly, pursuant to how evidence is taken in the district courts in Iowa to allow for an appeal. IOWA CODE §§ 62.19-62.20 (2018).

Further, the denial of Due Process in this case does not simply affect Ms. Koether. This Contest is about the disenfranchisement of twenty-nine voters. It is undisputed that these voters placed their ballots in the federal mail system prior to Election Day, pursuant to Iowa Code § 53.17. Without the opportunity to present evidence to support the allegations in the Contest via

exhibits and testimony of witnesses, the voters—through the parties—will not be allowed the opportunity to have their voices heard in this matter. These voters will continue to have their right to vote infringed upon, a right the United States and Iowa Constitutions bestow upon all eligible voters. U.S. CONST. AM. XXVI; IOWA CONST. ART. II, § 1.

IV. CONCLUSION

The twenty-nine Winneshiek County voters who mailed their ballots prior to Election Day should have their votes counted. This committee should review the barcode information provided to the USPS and the Winneshiek County Auditor, receive the ballots, determine their tally, and if necessary, correct any error made by the canvassing board. Only by counting the twenty-nine lawful votes can Due Process be accomplished and the integrity of the voting process and the Iowa House of Representatives be preserved.

Respectfully Submitted,

/s/ Shayla L. McCormally
Shayla L. McCormally
Kolby P. Warren
MCCORMALLY & COSGROVE, P.L.L.C.
2501 Grand Avenue
Des Moines, Iowa 50312
Telephone: 515-218-9878
Facsimile: 515-218-9879
shayla@mciowalaw.com
kolby@mciowalaw.com
ATTORNEYS FOR CONTESTANT
KAYLA KOETHER