

No. 4-16-\_\_\_\_\_

IN THE  
APPELLATE COURT OF ILLINOIS  
FOURTH JUDICIAL DISTRICT

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PEOPLE OF THE STATE OF ILLINOIS	)	Appeal from the Circuit Court of the Eighth
Ex rel. CONNIE HORNSEY,	)	Judicial Circuit, Adams County, Illinois
PETITIONER-APPELLEE,	)	
	)	
v.	)	
CHUCK VENVERTLOH,	)	
Adams County Clerk,	)	16-CH-24
DEFENDANT.	)	
_____	)	
	)	
PEOPLE OF THE STATE OF ILLINOIS	)	
Ex rel. LIDA MADIGAN, Attorney General	)	
Of Illinois,	)	The Honorable Chet Vahle,
INTERVENOR-APPELLANT.	)	Judge Presiding.

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**RESPONSE TO EMERGENCY MOTION FOR STAY PENDING APPEAL**

**INTRODUCTION**

Petitioner-Appellee, People of the State of Illinois ex rel. Connie Hornsey, by Jonathan H. Barnard, Adams County State's Attorney, respectfully requests that this Court vacate the Emergency Stay of orders of the Circuit Court of the Eighth Judicial Circuit, Adams County, Illinois on March 17 and March 18, 2016 granting Petitioner-Appellee a Mandatory Injunction,

thereby restoring the Injunction and permitting extended voting for certain affected voters in the March 15, 2016 Adams County Primary Election, pursuant to the terms and conditions contained in the Mandatory Injunction. Petitioner further requests that this appeal proceed as otherwise provided for by Supreme Court Rules.

### **BACKGROUND**

The parties are in agreement that the factual scenario which gave rise to the Petition For Mandatory Injunction, the Order Granting Mandatory Injunction, and the Emergency Motion For Stay Pending Appeal was an unusually heavy, if not unprecedented, voter turnout for the March 15, 2016 Primary Election in Adams County. It is conceded that Chuck Venvertloh, Adams County Clerk did not prepare sufficient ballots to meet voter demand, and that despite the application for, and entry of, a Temporary Restraining Order in 16 MR 80 to extend polling hours until 8:30 p.m. on March 15 to facilitate production and delivery of additional ballots to all affected precincts, (electronic copy attached), ballot shortages at virtually all 74 voting precincts in Adams County persisted. (Petition For Mandatory Injunction; par. 5; Transcript; Hearing on Petition For Mandatory Injunction held March 17, 2016, p.18; hereinafter "Transcript").

Consequently, A number of voters who appeared at the polls were either turned away due to lack of ballots, or sufficient ballots to accommodate voting despite extended hours were never delivered. Transcript; p 18. Connie Hornsey was but one such affected voter. See: Connie Hornsey Affidavit, attached to Petition For Mandatory Injunction.

### **THE REMEDY**

In response to the widespread disenfranchisement of voters resulting from lack of ballots

available to voters who appeared at all 74 voting precincts in Adams County, Petitioner-Appellee filed for, and obtained, an Order Granting Mandatory Injunction, requiring the Adams County Clerk to open the Office of the Adams County Clerk from 7:30 a.m. to 5:30 p.m. CDT from March 21 through March 25, 2016 for all voters who were unable to vote at their respective precincts in Adams County on March 15. See: Order Granting Mandatory Injunction, par. 3-5. The Adams County Clerk was further ordered to provide notice to the public of such extended voting times and dates for affected voters. Order Granting Mandatory Injunction, par. 6. Per the testimony of Chuck Venvertloh, such voting would employ the same technology as "Early Voting", specifically, that affected voters would, upon supplying identification and verifying eligibility as a registered voter, be supplied a ballot specific to the voter's precinct. Transcript; pp. 22-25.

### **THE SAFEGUARDS**

Both the Petition For Mandatory Injunction, as well as the Order Granting Mandatory Injunction, were carefully tailored to both identify voters who were actually affected by the lack of ballots, and to eliminate the opportunity for mischief. By way of background, Adams County employs a combination of computerized polling places, and polling places with manual registration. Transcript. pp. 19-22. In polling places which employed computerized registration, the registration process is such that a computerized receipt/application is produced upon the voter presenting himself or herself at the polling place. The voter then proceeds to the precinct station within that polling place, given that all polling places with computerized technology are multi-precinct polling places, and exchanges that registration/application for a ballot. As such, the combination of the issuance of a computerized receipt/application, and the lack of such

application in the precinct records from the March 15 Primary Election is a reliable indication that the affected voter appeared at the polls to vote, but was prevented from doing so due to lack of ballots at the voter's precinct. Transcript; pp .19-22.

For those voters who were prevented from voting, either at computerized polling places where voters who had not yet registered were told that no ballots were available and left without registering, or at polling places which employed manual registration, an equally reliable safeguard was woven into the Order Granting Mandatory Injunction. See: Order Granting Mandatory Injunction; par. 7. To both confirm the voter was unable to vote due to lack of available ballots and to eliminate mischief, any voter claiming to have appeared at the polls would be required to execute an affidavit when appearing for extended voting, under penalties of perjury, that the voter appeared at the polls to vote, but was turned away because there were no available ballots. Order Granting Mandatory Injunction; par. 7. For affected voters who voted at polls with manual registration, a voter signature is obtained only when a ballot is issued to that voter. Transcript; pp .21. As such, the absence of a signature on the polling place rolls is a reliable indication that the voter was not issued a ballot. Again, such voter claiming to have been affected by lack of available ballots would be required to execute an affidavit in the form provided as a condition of eligibility for extended voting.

Additionally, Chuck Venvertloh testified that extended voting, as requested and ultimately ordered, would not delay the certification of the Adams County voting totals on March 29, 2016, the date required by law to certify election results. Transcript; p. 24. Accordingly, the process of extended voting would both incorporate adequate safeguards for voter eligibility, and insure that voting results for the March 15, 2016 would be certified by the date required by law.

## DISCUSSION

1. That the right to vote is both Constitutionally guaranteed, and amounts to a sacred covenant between citizens and their government, needs no citation to authority. As previously argued, it is no exaggeration to state that citizen soldiers are asked to place themselves in harm's way, and even to give up their lives, to defend this right for the benefit of others. Government, by both the Constitution of the State of Illinois, and the Election Code adopted by the General Assembly, is the guardian of that right. Upon this, likely both the Petitioner-Appellee and the Intervenor-Appellant can agree. However, when government, the erstwhile guardian of this cherished right, is the very entity which thwarts the exercise of this right by willing and eligible citizens, it is a wrong. The argument of the Intervenor-Appellant would make it a wrong without a remedy. Even an extension of the Emergency Stay in this Court brings that result. However, in this particular and limited circumstance, this is a wrong that can, and should, be righted.

The Illinois Constitution requires that **each voter** have the right and opportunity to cast his or her vote without any restraint, and that his or her vote have the same influence as any other voter. *People v. Deatherage* 401Ill. 25, 37, 81 N.E.2d 419 (1949). (emphasis added). The intent of the Election Code is to give **all persons** the right to vote. *People ex rel. Shawrtz v. Fagerholm*, 719 Ill.2d. 131, 161 N.E.2d 20 (1959) (emphasis addd). In the Motion For Emergency Stay before this Court, the Intervenor-Appellant argues that extended voting as ordered by the Circuit Court would violate the provision of the Illinois Constitution guaranteeing "free and equal" elections. Motion For Emergency Stay; par. 10; p. 20. As applied, the position of the Intervenor-Appellant would result in an election that is inherently **unequal**. Willing, eligible voters were denied the right to vote, not by natural disaster or other circumstances beyond the control of all interested

parties, but by the government, in the person of the County Clerk, whose responsibility it was to provide sufficient ballots. Evidence in support of the Petition for Mandatory Injunction revealed that voters in virtually every precinct in Adams County were confronted with a lack of ballots. Some were able to endure delays; others were not, either because ballots never arrived or the polls closed even after extended hours. See: Affidavit of Connie Hornsey, attached to Petition For Mandatory Injunction. Even the Circuit Court was a witness to this ongoing problem. Transcript. pp. 40-41.

Intervenor-Appellant would compound the insult by arguing that providing extended voting rights to those able to prove their franchise was thwarted by government would be awarded "extra rights" by that process. Motion For Emergency Stay; par. 20; p. 10. Exactly what "extra rights" would those be, given that extended voting would only be open to those whose right was wrongfully denied them, and who would swear, upon penalties of perjury, that they endured the same on Primary Election day???

2. Intervenor-Appellant places mistaken emphasis upon the failings of the County Clerk in not providing sufficient ballots, citing a litany of questions about what might have been done to prevent the problem of disenfranchised voters. Again, it is conceded that lack of available ballots led to that disenfranchisement. However, focus upon where, how, or in what manner the process in general, or the County Clerk specifically, failed the affected voters, the fact remained that government denied their right to vote. Such voters should not be sacrificed upon the altar of "what if's". They did not create the problem. They are blameless. Their right is fundamental and preeminent.

3. Central to the decision of the Circuit Court, as well as its supporting logic, is the evidence and the reality that the remedy embodied in the Order Granting Mandatory Injunction is uniform, feasible with uniformity in terms of technology/method, and within timetables for certification of the Primary Election vote totals for Adams County. The remedy imposed is possessed of sufficient guarantees to identify affected voters and guard against mischief.

Our Supreme Court has observed that, with regard to parameters for polling hours, the language of the Election Code is directory rather than mandatory, absent evidence of fraudulent intent, or a statute to the contrary. *People ex rel. Seagren v. Sackett*, 351 Ill.363, 377, 184 N.E. 646, 652-653 (1933). Petitioner-Appellee concedes that *Seagren* deals with the hours during which polling places may be open, but Petitioner-Appellee submits that the same logic would apply to the date or days when polls may be open in this limited circumstance. This has particular traction given Intervenor-Appellant's assertion that the Mandatory Injunction is fatally flawed, arguing that potential disparity among counties, or even polling places, regarding the dates provided for voting violates the "general and uniform" provision of the Illinois Constitution. Ill.Const. art. III, sec. 4. This is of particular significance given the fact that the provision of the Election Code specifying the **hours** of voting (10 ILCS 5/7-5(e)) and the provision of the Election Code specifying the **date** of the election (10 ILCS 5/2A-1.1(a)) both contain the same mandatory language "shall", specifically concerning when those details of elections "shall" occur. Does not the scenario of different polling hours from county to county or polling place to polling place; a permissible deviation according to *Sackett*, embody the same logic as the extended voting here, especially under the specific limitations provided under the Mandatory Injunction? Intervenor-

Appellant in fact concedes that there is no authority one way or the other upon this issue.

Transcript on Hearing On Motion To Intervene and Motion To Vacate; p. 18.

4. Likewise, the argument that affected voters will somehow be swayed from their original intent by being informed of, or having access to, informal voting totals (and thus would obtain unfair weight or advantage with their vote), fails for two reasons. First, where is the logic that a voter's private deliberation with himself or herself, or conviction regarding the vote will change with the wind, other than the assumption that voters are prone to acting upon instincts other than long held conviction? Second, and more to the point here, is the notion that the **right to vote itself**, untethered to a likely or even predetermined outcome, remains every bit as vital and protectable. While Petitioner-Appellee concedes that informal vote totals became available by the evening of March 15, how does such serve as justification to further abridge the right to vote, previously denied to affected voters?

Extended voting is limited by the Circuit Court to those whose record at computerized polling places revealed their registration but not their casting a ballot. Absent such, a voter claiming to have been denied the right to vote due to absence of ballots would be required, as a condition of extended voting, to execute an affidavit under penalties of perjury that he or she was denied the right to vote for that reason. While Intervenor-Appellant looks with skepticism upon such a process and guarantee, it is both useful and instructive to keep in mind that Courts rely upon the taking of an oath as the primary, and often only, assurance of veracity, every single day and in every single Courthouse throughout this land.

5. Finally, the argument of Intervenor-Appellant that the limited remedy ordered by the Circuit



Court will "open the flood gates to other election mischief and unfairness" cannot withstand scrutiny. Emergency Motion For Stay Pending Appeal. par. 28, p.15. Such an assertion is not only speculation by definition, but it completely ignores the safeguards imposed by the Circuit Court. Worse, it presumes that voters who were denied their right to vote by the very "guardian" of that right would ignore the gravity of their oath, and now engage in wholesale fraud on the heels of their previous, and appropriate, attempt to vote.

To the contrary, the Mandatory Injunction would restore a right denied to voters; a denial of the most egregious kind. Furthermore, the Order Granting Mandatory Injunction provides that those votes cast in the extended voting procedure are to be segregated, tallied and counted separately. As such, should further challenge or reversal of the Order Granting Mandatory Injunction occur, those ballots will be immediately recognizable as a distinct lot, and the appropriate remedy imposed. Such a remedy would both preserve for review the position and claim of Intervenor-Appellant, and at the same time restore the right to vote to those voters.

### CONCLUSION

Wherefore, Petitioner-Appellee prays that this Court vacate and dissolve its Order Granting Emergency Stay.

Respectfully Submitted,



Jonathan H. Barnard

Adams County State's Attorney

521 Vermont, Quincy, IL 62301

217 277 2225

[jbarnard@co.adams.il.us](mailto:jbarnard@co.adams.il.us); ARDC # 0113506

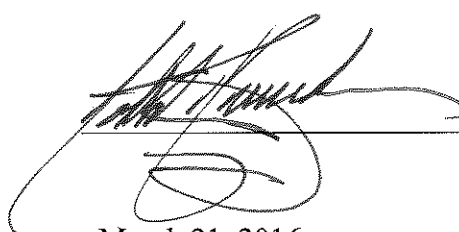
STATE OF ILLINOIS        )  
                                  ) SS.  
COUNTY OF ADAMS )

**PROOF OF SERVICE**

The undersigned, being first duly sworn upon oath, deposes and states that a copy of the foregoing Response To Emergency Motion For Stay Pending Appeal and Supporting Record was served on the below-named persons by email on March 21, 2016, before 3:30 p.m.

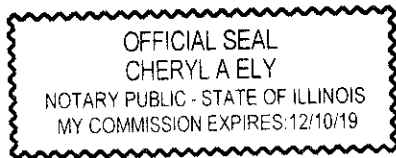
Brett E. Legner, #6256278  
Deputy Solicitor General  
100 West Randolph Street  
12<sup>th</sup> Floor  
Chicago, IL 60601

Chuck Venvertloh  
Adams County Clerk  
507 Vermont Street  
Quincy, IL 62301



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SUBSCRIBED and SWORN to before me on March 21, 2016.



  
Notary Public