

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

KELLI JO GRIFFIN,

Petitioner,

vs.

TERRY BRANSTAD, in his official capacity as the Governor of the State of Iowa, MATT SCHULTZ, in his official capacity as the Iowa Secretary of State, and DENISE FRAISE, in her official capacity as the County Auditor of Lee County, Iowa,

Respondents.

CASE NO. EQCE077368

RULING AND ORDER ON MOTION TO DISMISS OR IN THE ALTERNATIVE MOTION TO RECAST

On January 22, 2015, Respondent Matt Shultz’s Motion to Dismiss or in the alternative Motion to Recast, Respondent Terry Branstad’s Motion to Dismiss, and Respondent Denise Fraise’s Motion to Dismiss came on for hearing. Petitioner, Kelli Jo Griffin appeared personally and with her attorneys Rita Bettis and Randall Wilson. Respondents Branstad and Schultz appeared through Iowa Solicitor General Jeffrey Thompson. Respondent Fraise appeared with Lee County Attorney Michael Short. After reviewing the file and hearing the arguments of counsel, the Court enters the following Ruling and Order:

1. Respondent Matt Shultz’s Motion to Dismiss or in the alternative Motion to Recast.

Respondent Matt Shultz argues that the Petitioner should recast her Petition because it is not clear from the pleadings “whether the Petitioner is bringing a Petition for Declaratory Judgment, Injunctive Relief, and Mandamus as is captioned based upon the alleged unconstitutionality of Iowa’s election code or whether the Petitioner is attempting to bring two

direct causes of action under the Iowa Constitution.” Plaintiff assures the Court she is not bringing direct causes of action against the Respondents under the Iowa Constitution.

Under notice pleading:

The petition need not allege ultimate facts that support each element of the cause of action. The petition, however, must contain factual allegations that give the defendant fair notice of the claim asserted so the defendant can adequately respond to the petition. A petition complies with the fair notice requirement if it informs the defendant of the incident giving rise to the claim and of the claim's general nature.

Rees v. City of Shenandoah, 682 N.W.2d 77, 79 (Iowa 2004) (internal citations and quotations omitted).

On this particular point, the Petition clearly states that the Petitioner is seeking a declaratory judgment that the Petitioner’s felony conviction for delivery of less than 100 grams of cocaine is not an infamous crime under the Iowa Constitution. In addition, Petitioner seeks injunctive relief to enjoin the State of Iowa from preventing her to vote and a writ of mandamus ordering the Secretary of State and the Lee County Auditor to obey the mandate of the Court’s declaration. The Court finds the Petition contains the necessary operative facts to inform the Respondents “of the incident giving rise to the claim and of the claim's general nature.” *Id.* Dismissal is not required because Petitioner’s Petition does not plead direct causes of action. Recast is unnecessary because the Petition is sufficiently clear on this point to enable the Respondent Secretary of State to plead to it. Iowa R. Civ. P. 1.421(1)(d). Therefore, Respondent Shultz’s Motion to Dismiss or to Recast is denied on this point.

Respondent Matt Shultz also argues that the Petitioner should recast her Petition because it is unclear whether she is challenging the constitutionality of the election code facially or as applied to her. While Petitioner’s resistance states she is merely seeking relief on her own behalf, her Petition is not clear on this point. The Petition is captioned solely in her name, and in the

pleadings she argues that her specific felony offense of conviction of is not an infamous crime under the Iowa Constitution. However, in her prayer for relief, Petitioner seeks relief on her own behalf and for other Iowa citizens who have been convicted of other felonies that are not infamous crimes. Thus, her pleading is ambiguous and is insufficiently clear on this particular point to enable the Respondent to plead in response.

It is not clear from the face of the Petition the basis upon which she makes her broad prayer for relief, or to what extent, if any, she seeks to have the Court's ruling apply to other Iowa citizens. For example, does Petitioner seek to have the Court's declaratory ruling apply to herself and all other Iowans convicted of the same crime? Does she seek to have the ruling apply to all Iowans convicted of any felony? Are there some felonies that Petitioner would concede are infamous crimes to the extent that Iowans convicted of those crimes are not entitled to relief? If Petitioner is limiting her prayer for relief solely to her own situation, she shall recast to so state. If the Petitioner is seeking an order from this Court that would apply to anyone but her, she shall recast her Petition to clearly state the basis and authority for such a claim.

The Court acknowledges our liberal notice pleading rules. The Court recognizes the Petitioner may plead in the alternative. The Court does not intend to allow the Respondent to micro-manage the Petitioner's pleadings. However, due to the ambiguity of the allegations of Plaintiff's Petition vis à vis her prayer for relief, it is reasonable to require her to recast her petition or to make a more specific statement to enable the Respondent to plead to it. I. R. Civ. P. 1.433. This is particularly important in this case where the pleadings will frame the issues to be decided by summary judgment based upon undisputed facts.

To this extent, Respondent Shultz's Motion to Recast is granted.

2. Respondent Terry Branstad's Motion to Dismiss

Respondent Terry Branstad, Governor of the State of Iowa, argues that he is not a proper party to this action, because the Secretary of State is the Official Registrar of Voters and is the official responsible for the preservation and maintenance of Iowa's voter registration rolls. The Petitioner asserts that Governor Branstad is the Chief Magistrate and is responsible for the faithful execution of the laws under the Iowa Constitution. In addition, Respondent Branstad issued Executive Order 70, which requires convicted felons such as the Petitioner to apply to the Governor for a restoration of their voting rights. Petitioner claims that in order to compel the State of Iowa to comply with the Court's order, it is necessary to name the Governor as party.

Respondent Terry Branstad is not an indispensable party to this action. His absence will not prevent the Court from rendering any judgment between the parties before it. Iowa R. Civ. P. 1.234(2). Petitioner is not challenging the constitutionality of Executive Order 70. In fact, if the Court finds Petitioner's felony conviction was not an infamous crime and grants the Petitioner the relief she is requesting, she will have the right to vote and will not be required to apply to the Governor for a restoration of rights. The Iowa Secretary of State and the Lee County Auditor are the individuals responsible for the voter registration rolls and voter eligibility, not the Governor. The Governor can be dropped from this action without any effect of the Petitioner's right to obtain the relief that she seeks. Iowa R. Civ. P. 1.236(1). The State of Iowa will not refuse to comply with any mandate the Court may direct simply because the Governor is not a party. The presence of the Secretary of State as a party is sufficient to secure any relief the Petitioner seeks.

Further, Petitioner's Petition against the Governor fails to state a claim upon which relief may be granted. Accepting the allegations of the Petition as true, it appears to a certainty that Petitioner will not be entitled to relief against the Governor under any state of facts that could be

proved in support of the claim asserted. Iowa R. Civ. P. 1.421(1)(f); *Mlynarik v. Bergantzel*, 675 N.W.2d 584, 586 (Iowa 2004). As stated above, the Governor is only able to restore rights that have been previously taken away. If the Petitioner is correct in her allegations, she will have the right to vote, and will not have to apply to the Governor to have her rights restored.

Therefore, Respondent Terry Branstad's Motion to dismiss is granted.

3 Respondent Denise Fraise' Motion to Dismiss

Respondent Lee County Auditor Denise Fraise argues that she is not a proper party to this action, as she merely takes the voter registration rolls as established by the Secretary of State, and utilizes those to determine who is eligible to vote. The Petitioner argues that the Lee County Auditor is an election commissioner who registers voters, verifies voter eligibility and administers elections and determines challenges to voter eligibility.

Respondent Denise Fraise is an indispensable party in this matter. Iowa R. Civ. P. 1.234(2). The County Auditor's absence would prevent the court from rendering judgment because it may be necessary to order the Auditor to comply with the mandate of the Court's declaration. The County Auditor is the county commissioner of elections. Iowa Code § 47.2. The County Auditor shares responsibilities with the Secretary of State who is designated as the state commissioner of elections. Iowa Code §§ 39.3, 47.1. The County Auditor conducts voter registration and conducts elections in the county. Iowa Code § 47.2. The Auditor determines challenges to voters based on eligibility, including for felony conviction. Iowa Code § 48A.16. The County Auditor is responsible for cancelling the registration of an ineligible voter based upon a felony conviction. Iowa Code § 48A.30. Respondent Fraise, as the Lee County Auditor, verifies voter eligibility and administers elections locally. The Petition alleges that Auditor Fraise identified her ballot and, after running her information through the voter registration

program at the Lee County Auditor's Office, determined that she was ineligible because of her prior felony conviction resulting in criminal charges for which she was acquitted.

While the Auditor contends simply performs a ministerial duty, Petitioner claims she has the authority to exercise a degree of discretion in the performance of her duties. See Iowa Code § 48A.16. The Court appreciates the Auditor's representation that she will follow the Court's mandate without being ordered to do so. The Court has no reason the question the Auditor's sincerity. However, the Petitioner is not required to accept the Auditor's assurances. The Court finds that the Lee County Auditor is a proper party in this matter. *See Selzer v. Synhorst*, 113 N.W.2d 724 (1962).

Therefore, Respondent Denise Fraise's Motion to Dismiss is denied.

ORDER

IT IS THEREFORE THE ORDER OF THIS COURT that Respondent Matt Shultz's Motion to Dismiss or in the alternative Motion to Recast is hereby GRANTED in part and DENIED in part. By agreement of the parties, Petitioner will amend and recast her pleading to reflect that Paul Pate is the Secretary of State. Respondent Terry Branstad's Motion to Dismiss is hereby GRANTED. Respondent Denise Fraise's Motion to Dismiss is hereby DENIED.



State of Iowa Courts

Type: OTHER ORDER

Case Number **Case Title**
EQCE077368 KELLI JO GRIFFIN VS TERRY BRANSTAD ET AL

So Ordered

A handwritten signature in black ink, reading 'Arthur E. Gamble'. The signature is written in a cursive style.

Arthur E. Gamble, Chief District Judge,
Fifth Judicial District of Iowa