

IOWA VOTER REGISTRATION COMMISSION

<p>IN RE:</p> <p>LINN COUNTY AUDITOR JOEL MILLER,</p> <p>Complainant,</p> <p>v.</p> <p>IOWA SECRETARY OF STATE PAUL PATE, in his official capacity,</p> <p>Respondent.</p>	<p>RESPONDENT’S REPLY TO COMPLAINANT’S RESISTANCE TO MOTION TO DISMISS</p>
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COMES NOW Respondent Iowa Secretary of State Paul Pate, by and through undersigned counsel, and states as follows in reply to Complainant’s Resistance to Respondent’s Motion to Dismiss:

Complainant Linn County Auditor takes the unique approach of filing both a “Resistance” and an “Answer” to Secretary Pate’s Motion to Dismiss.¹ However, no matter how many proverbial bites at the apple he takes, Auditor Miller cannot overcome the deficiencies of his original complaint. Indeed, Auditor Miller’s Resistance itself proves the fatal flaws of his

¹ This Reply treats both filings interchangeably.

Complaint. Accordingly, the Voter Registration Commission (“VRC”) should grant Secretary Pate’s Motion to Dismiss.

Auditor Miller is correct that a motion to dismiss requires the VRC to view the facts “in the light most favorable to the complainant.” Resistance p. 2. However, the administrative rules governing this matter require that the complaint must be “sufficiently detailed to apprise both the respondent and the presiding officer of the nature of the alleged violation.” Iowa Admin. Code 721—25.2. Auditor Miller’s response is that he will “present facts at hearing to support the allegations.” Resistance p. 3. That is too late. Auditor Miller’s Complaint has not provided sufficient details to apprise either Secretary Pate or the VRC of the nature of the alleged violation.

Auditor Miller’s Answer does not rehabilitate the infirmities of his Complaint. First, Auditor Miller contends that a HAVA violation has occurred by pointing to errors in the “felon list.” Answer p. 2. The felon list is not raised at any time in his Complaint. For that reason alone, this argument should be ignored. However, Auditor Miller’s own supporting exhibits further undermine his point. Both the Brennan Center for Justice letter (Exhibit 2) and the media reports (Exhibit 1) Auditor Miller cites reference potential violations of the Nation Voter Registration Act, not HAVA. Even if he had filed a HAVA complaint regarding the felon list, Auditor Miller’s own Exhibit again shows that the relief he could be granted is already happening – namely the Secretary of State’s office is reviewing proactively every entry in the felon database. *See* Answer Exhibit C (Sec. Pate to Analyze Felony Database).

Auditor Miller throws a lot of chaff in the air regarding the security of I-Voters, but a scarce few kernels of wheat are present. The HAVA standard is “adequate” security. See 42 U.S.C. § 15483(a)(3). HAVA does not require Secretary Pate to guarantee that no attempted hack of I-Voters will ever be successful. Indeed, Auditor Miller admits that the “security measures are

adequate for IVoters users who follow the law and rules. . . .” Once properly sorted, Auditor Miller’s concerns fall into two categories – hackers and those who have access to I-Voters by virtue of their employment with the Secretary of State or a county auditor who either become a bad actor or allow their credentials to fall into a bad actor’s hands.

All parties agree that an outside hack of I-Voters is a concern. That is why the Obama administration designated election systems as critical infrastructure. *See* U.S. Dept. Of Homeland Sec., *Statement by Secretary Jeh Johnson on the Designation of Election Infrastructure as a Critical Infrastructure Subsector*, <https://www.dhs.gov/news/2017/01/06/statement-secretary-johnson-designation-election-infrastructure-critical> (Jan. 6, 2017). That is why the Secretary of State has taken multiple steps outlined in the Motion to Dismiss to guard I-Voters from malicious actors. Thus, Secretary Pate has instituted much more than adequate security in multiple layers, and that is what HAVA demands.

The very nature of bad guys versus good guys is that the good guys cannot foil every bad act. Nevertheless, Auditor Miller hypothesizes various scenarios that “could” happen. For example, a hacker *could* steal an I-Voters user’s credentials. Answer p. 4. An intruder *could* enter an unlocked county building.² Answer p. 5. Malware or ransomware *could* be added to an I-Voters user’s computer.³ Answer p. 8. Auditor Miller contends that none of the security measures in place will prevent these actions.

Respectfully, none of the remedies Auditor Miller claims to seek would prevent them either. Secretary Pate’s layered approach to security requires would-be bad actors to circumvent

² Auditor Miller cites media reports regarding an unlocked door at the Dallas County Courthouse. However, he does not note that the Dallas County Election Office is located in a separate county administration building, as is the Linn County Election Office.

³ Even if malware were added to an I-Voters user’s computer, the I-Voters database itself is protected by the use of a screenshare that creates a layer between the computer terminal and database.

different protections at different times, decreasing the likelihood of success of any attempted intrusion to the I-Voters database. At best, the Complaint upon which this entire matter is based seeks “an improved or new database.” Complaint unnumbered p. 3. In response to the Motion to Dismiss, Auditor Miller completely abandons his attempt to have the VRC order Secretary Pate to implement “an improved or new database.” Rather Auditor Miller asks the VRC to modify I-Voters to require two party release when a registered voter moves from one county in Iowa to another county in Iowa and updates his or her voter registration in the new county. First, it is impossible to see how this would prevent Auditor Miller’s hypothetical bad actors who have intruded the I-Voters system from moving a voter from Linn County to Cerro Gordo County, if that is the malicious act they intend. As Auditor Miller notes, bad guys do not follow the rules. Moreover, the Secretary of State has already begun discussions of the two-person release idea with the county auditors statewide. *See* Miller Answer Exhibit 5. In addition, Secretary Pate is working with county auditors, including Auditor Miller, to implement the VoteShield program to monitor all voter changes and flag statistical anomalies for review. Given that Secretary of State is researching this very change now and has a system in place to monitor voter changes, the VRC should let that process work rather than impose a change now.

Second, in his Answer, but not in the Complaint, Auditor Miller asks for confirmation that the Secretary “has fulfilled his duty to ‘prescribe by rule the procedures for access to the state voter registration file, security requirements, and access protocols for adding, changing, or deleting information from the state voter registration file’ by promulgating, publishing, and enforcing his rules and procedures.” The answer to this request begins with then Secretary of State Culver, and continues unabated with Secretaries Mauro, Shultz, and Pate. Yes. The administrative rules are

codified in Iowa Administrative Code chapters 721-28 and 721-29. The process and procedures are contained in the Auditor's Handbook available to all county auditors and their staff.

Third, he asks the VRC to order Secretary Pate to audit all ninety-nine county auditors to confirm compliance with the prescribed rules and procedures. This relief goes beyond the scope of what may be granted by a Presiding Office in this preceding. *See* Iowa Admin. Code 721—25.9(5). In addition, all county auditors take an oath to discharge the duties of their offices. As duly elected officials in their county, the Secretary of State is not required to audit the compliance with the law by duly elected county officers and their staffs. That is the duty of the county auditor. Nevertheless, while an audit may give a rogue employee pause, it will not deter an outside hacker.

For the forgoing reasons, Respondent Secretary of State Paul Pate respectfully renews his request that the VRC, as the Presiding Officer in this matter, grant the Respondent's Motion to Dismiss.

Respectfully submitted,

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NOTICE OF SERVICE

All Parties served by Email.