

IN THE IOWA DISTRICT COURT FOR FLOYD COUNTY

GORDON BOGE,	)	
Plaintiff,	)	Case No. EQCV _____
	)	
VS.	)	PETITION FOR WRIT OF
	)	MANDAMUS
GLORIA CARR as Floyd County Auditor, AND	)	
LINDA TJADEN, DOUG KAMM,	)	
ROY SCHWICKERATH as Members of	)	
Floyd County Board of Supervisors	)	
	)	
Defendant.	)	

COMES NOW, the Plaintiff, and in support of his Petition for Writ of Mandamus and for cause of action against the Defendants herein and states as follows:

1. That this Plaintiff is a resident of Floyd County, Iowa, and a qualified elector in Floyd County, Iowa who signed, and assisted in the organization and submission of a Petition for special Election to the Floyd County Election Commissioner on June 1, 2021.
2. That the Defendant, Gloria Carr, is the Floyd County Auditor, during all relevant times relating to this litigation and the circumstances leading up to the litigation.
3. That the Defendants, Linda Tjaden, Doug Kamm, and Roy Schwickerath are the current members of the Floyd County Board of Supervisors, and acting in their official capacity during all relevant times leading up to this litigation and all relevant times leading up to the same.
4. That on June 1, 2021 the Plaintiff, in his individual capacity presented to the Defendant Floyd County Auditor a SPECIAL ELECTION PETITION OF ELIGIBLE ELECTORS (for special election pursuant to Section 331.207) consisting of 97 pages and containing a total of over 1,100 names.

5. The Petition for special election on supervisor districts under Iowa Code §331.206 contained the required numbers of signatures of eligible electors of the county as specified in §331.306 which was equal in number to at least 10% of the votes cast in the county for the office of President of the United States, or governor at the preceding general election.

6. The requirements of the Petition were to include the signatures of the Petitioners, a statement of their place of residence, and a date on which they signed the Petition all pursuant to §331.306(1).

7. Pursuant to §331.306 the Petition, consisting of 97 pages, was filed after examination by the county auditor as county commissioner, and the same appeared valid on its face at time of filing.

8. The only statutorily specified basis for rejection of the Petition for filing by the county commissioner is if the Petition on the face of the instrument appears to lack the required number of signatures. Iowa Code §331.306(3) states, "If it lacks the required number of signatures it shall be returned to the petitioners."

9. That the County Auditor did not return the Petition to the Petitioner as required for rejection by Iowa Code §331.306(3) and file stamped all pages of the Petition submitted by the Plaintiff.

10. Having been filed by the Clerk of Court on June 1, 2021, the Petition became automatically valid unless written objections were filed with the County Auditor within five (5) working days after the Petition was filed, which ended on close of business at 4:30 p.m. Tuesday, June 7, 2021.

11. That objections, if filed (here, there were none), were required to follow the objection process set out in Code §44.7, pursuant to §331.306(4) to be considered by

the county auditor, the county treasurer, and the county attorney. No such panel was installed or considered any objections.

12. That the Board of Supervisors was and is mandated by §331.207 to call a special election to select one of the supervisor representation plans specified in §331.206 under which the supervisors shall thereafter be elected.

13. The Board of Supervisors conducted a meeting on Tuesday, June 8, 2021 where it denied the Petition on a 3-0 vote the Petition filed on June 1, 2021.

14. Lack of form consistent with §45.5(2) requirements on nomination petitions that specifically require “signatures on a petition page shall be counted only if the information required in subsection 1 is written or printed at the top of the page.”

15. Failure to prove the validity of all signatures to the satisfaction of the Board that members of the eligible electorate signing the same correctly understood what they were signing was also argued by the Board at the June 8, 2021 meeting.

16. The additional requirements attempted to be imposed by the Board of Supervisors are and were invalid, without legal basis, and contrary to the statutory requirements of §331.306(3) which requires nothing more than the Petition appear valid on its face for acceptance of filing.

17. That the Board of Supervisors is the proper party to accept or deny any petition authorized under Chapter 331 only if the question raised in the Petition is to be submitted for vote at a general election, not a special election. Iowa Code §331.306(2). (emphasis added.)

18. Iowa Code §331.207 requires filing of a Petition for Special Election with the county commissioner to be held on the first Tuesday of August of odd numbered years.

19. Failure to consult the commissioner of elections before filing the Petition for signatures is not required and would present an impermissible barrier to a petition for special election at the county level.

20. The County Board of Supervisors was advised by the Assistant Floyd County Attorney, Randall Tilton, of Iowa Supreme Court decision Berent v. City of Iowa City, 738 NW 2d 193 (Iowa 2007) and an Iowa Attorney General's Office Opinion dated in 1980. Both prohibited additional terms or conditions to filing and approval of the petition for special election not specifically authorized by the applicable statute here, §331.207 and §331.306.

21. The County Board of Supervisors is required by §331.207(1) to call a special election to be held for the purpose of selecting one of the supervisor representation Plans specified in §331.206 under which the Board of Supervisors shall be elected, "upon petition of the number of eligible electors", yet the Board of Supervisors has not taken any action to call said special election, and instead voted to deny the Petition.

22. Notice of Special Election is required to be published once each week for three successive weeks in an official newspaper of the county with the last publication occurring not less than four (4) nor more than twenty (20) days before the election. Accordingly the deadline for filing required notice in the newspaper begins Friday, June 25, 2021 and ends July 9, 2021.

23. Defendant has refused the demands of the Plaintiff to proceed with steps required to submit this Petition to voters of Floyd County by special election.

24. Jurisdiction is appropriate under Chapter 661 for the issuance of a Writ of Mandamus directing the Floyd County Board of Supervisors and Floyd County Auditor be compelled to:

- a. Publish notice of Special Election as required by Section 331.207.
- b. Hold a special election on the 1st Tuesday of August, 2021 or August 3, 2021.

25. That the Plaintiff has no plain, speedy and adequate remedy at law other than Writ of Mandamus to timely enforce the requirements of holding a special election.

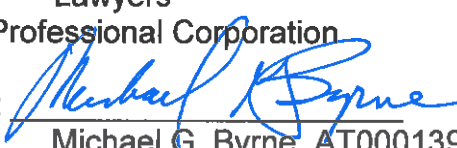
26. That the failure of the public office holders to comply with the law inflicts past, present, and future damages on the Plaintiff, including denial of due process of law.

WHEREFORE, Plaintiff prays that a Writ of Mandamus be issued to:

- A. Direct and require the Floyd County Board of Supervisors and the Floyd County Auditor to publish notice of Special Election as required by Section 331.207 and hold a special election on the 1st Tuesday of August, 2021 or August 3, 2021.
- B. The Court shall award a judgment for costs of this action against the Defendant in an amount determined by the Court and as taxed by the Clerk of Court.
- C. That Defendants be ordered to pay attorney fees and other damages to Petitioner in the bringing of this action.

Respectfully Submitted,

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Lawyers
A Professional Corporation

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