

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

JESSICA BENSLEY, Plaintiff, vs. PAUL PATE, Iowa Secretary of State, and JAMIE FITZGERALD, Polk County Auditor, Defendants.	Case No. 4:20-cv-00329-JAJ-HCA JAMIE FITZGERALD'S PRE-ANSWER MOTION TO DISMISS AND REQUEST FOR JUDICIAL NOTICE
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COMES NOW Polk County Auditor Jamie Fitzgerald, and for his Pre-Answer Motion to Dismiss and Request for Judicial Notice, states as follows:

1. Plaintiff Jessica Bensley filed a Complaint and Jury Demand under 42 U.S.C. section 1983 against Secretary of State Paul Pate and Polk County Auditor Jamie Fitzgerald. Plaintiff alleged that her Fourth and Fourteenth Amendment rights were violated when her 2018 General Election provisional ballot was rejected.
2. The Complaint fails to present a justiciable cause of action against Auditor Fitzgerald.
3. Auditor Fitzgerald moves to dismiss the Complaint and Jury Demand under Federal Rule of Civil Procedure 12(b)(1)(6) as Ms. Bensley fails to state a claim upon which relief can be granted under 42 U.S. section 1983.
4. Auditor Fitzgerald further requests this Court take judicial notice of Provisional Ballot Form, Rejected Provisional Ballot Notification, and Plaintiff's Voter File pursuant to Federal Rule of Evidence 201. These documents are attached as Exhibits 1, 2, and 3.

5. Pursuant to Local Rule 7(d), a brief in support of this motion has been filed contemporaneously herewith.

WHEREFORE Defendant Polk County Auditor Jamie Fitzgerald respectfully requests that this Court grant his Motion to Dismiss and any other relief deemed appropriate under the circumstances.

Respectfully Submitted,

JOHN P. SARCONI
POLK COUNTY ATTORNEY

/s/ Meghan L. Gavin
Meghan L. Gavin AT0008949
Assistant Polk County Attorney
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Des Moines, IA 50309
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ATTORNEY FOR POLK COUNTY AUDITOR
JAMIE FITZGERALD

Provisional Ballot Envelope

Reason for Provisional Ballot

To be completed by Precinct Official

Precinct: _____

Election Date: ____/____/____

Reason for Provisional Ballot (check all that apply):

☐ Voter did not have proper identification

☐ Voter did not have proper proof of residence

☐ Absentee voter with no ballot to surrender

☐ Voter was challenged by another registered voter (attach the signed challenge to this envelope)

☐ Election Day Registrant in non-pollbook precinct

Precinct Election Official’s Signature _____ Date _____

Affidavit of Provisional Voter

To be completed by Voter

Print Name: _____

Address: _____

Date of birth: ____/____/____

Phone (optional): _____

I do solemnly swear or affirm all of these things. I am a United States citizen, at least 18 years of age. I believe that I am a registered voter of this county and/or eligible to vote in this election. I have not voted and will not vote in any other precinct in this election. If my current voter registration record indicates another party affiliation or no party affiliation, I swear or affirm that I have in good faith changed my previously declared party affiliation, or de-clared my party affiliation, and now desire to be a member of the party indi-cated herein. I understand that any false statement in this declaration is a criminal offense punishable as provided by law.

Voter’s Signature _____ Date _____

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Complete voter registration form. Mark ballot & seal in envelope. Return completed ballot in envelope to Precinct Official.

STATE OF IOWA OFFICIAL VOTER REGISTRATION FORM	
In Iowa, you are not qualified to vote following a felony conviction until your right to vote is restored by the Governor. To learn more about voting after a felony conviction visit RestoreYourVote.iowa.gov.	
Qualifications	1. Are you a citizen of the United States? ☐ Yes ☐ No
	2. Will you be 18 years of age on or before Election Day? ☐ Yes ☐ No
If you answered No to either of these questions, do not complete this form.	
ID Number Provide your Iowa driver’s license, non-operator ID number, or the last 4 digits of your Social Security number if you have one.	☐ IA driver’s license #: _____
	☐ IA non-operator ID #: _____
	☐ Last 4 digits of Social Security number: XXX – XX – _____
	☐ I do not have an IA driver’s license, non-operator ID, or Social Security number.
Additional Information Date of birth and sex are required.	Date of Birth (month, day, year) ____/____/____
	Sex ☐ Male ☐ Female
Phone and/or Email (optional) _____	
Your Name	Last _____
	First _____
	Middle _____ Suffix _____
Address Where You Live	Street Address (include apt., lot, etc.) _____
	City _____ Zip _____ County _____
If homeless or you do not have an established residence, describe where you reside: _____	
Where You Receive Mail (if different)	Address/P.O. Box _____
	City _____ State _____ Zip _____
Previous Voter Registration Information	Your name was _____
	Your address was _____
	Your city and state were _____ Your zip was _____
Political Affiliation (check only one)	Political Parties: ☐ Democratic ☐ Republican ☐ No Party
	Non-Party Political Organizations: ☐ Green ☐ Libertarian
WARNING If you sign this form and you know the information is not true, you may be convicted of perjury and fined up to \$7,500 and/or jailed for up to 5 years.	Registrant Affidavit I swear or affirm under penalty of perjury that: - I am the person named above. - I am a citizen of the United States. - I have never been convicted of a felony OR my right to vote has been restored by the Governor, including through Executive Order, after a felony conviction. - I am at least 17 years old. - I live at the address listed above. - I am not currently judged by a court to be “incompetent to vote.” - I do not claim the right to vote anywhere else.
	Signature _____ Date _____

Statement to Person Casting a Provisional Ballot
(To be completed by Precinct Official and given to Voter)

Voter’s Name: _____

Reason for Provisional Ballot (check all that apply):

☐ Voter did not have proper identification (see “What you need to provide” below)

☐ Voter did not have proper proof of residence

☐ Absentee voter with no ballot to surrender

☐ Voter was challenged by another registered voter Reason: _____

☐ Election Day Registrant in non-pollbook precinct

What you need to provide before your ballot will count:

☐ Photo ID that has not expired and contains your name and picture

☐ One of the following that has not expired: Iowa driver’s license, out-of-state driver’s license, non-driver ID, U.S. passport, U.S. military ID, employer ID card, student ID issued by Iowa high school or college, or veterans ID card

☐ One of the following showing your name and current address: bank statement, paycheck, utility bill, property tax statement, residential lease, government check, or other government document.

☐ No other documents necessary

Deadline: _____ a.m./p.m., _____ (date)

Mail or Deliver Evidence to: _____, County Auditor

County Auditor Address: _____

If proof of ID or residence is required, your provisional ballot may be counted if you bring a copy of the identification listed above to this precinct before the polls close today or to the county auditor at the above address by the above deadline. If your ballot is not counted, you will be notified by mail of the reason why it was not counted.

Your right to vote will be reviewed by the Special Precinct Board. You have the right and are encouraged to make a written statement and submit additional written evidence to the Board supporting your qualifications as a registered voter.

Precinct Election Official’s Signature _____	EXHIBIT
	1 Date _____

Rejected Provisional Ballot

Date:

Dear

This letter is to notify you that the provisional ballot you cast at the election held on ____/____/____ has been rejected for the following reason(s):

- ☐ We asked for, but did not receive, a copy of your identification.
- ☐ You already voted in this election either at the polls or by absentee ballot.
- ☐ You do not meet all of the qualifications to be registered to vote.
- ☐ You were not registered to vote in the precinct where the provisional ballot was cast on Election Day.
- ☐ Other:

If you have questions, please call the county auditor's office at

Sincerely,

County Auditor and Commissioner of Elections

Initials of member of absentee ballot and special voters precinct board: _____

EXHIBIT 2

County: Polk

Voter Profile Report

Date : 12/16/2020

Voter ID : [REDACTED]

Voter Information

<u>Voter ID</u>	<u>Last Name</u>	<u>First Name</u>	<u>Middle Name</u>	<u>Suffix</u>	<u>DOB</u>
[REDACTED]	BENSLEY	JESSICA	DAWN		[REDACTED]

Registration Information

<u>Party</u>	<u>Status</u>	<u>Reasons</u>
Democrat	Active	

<u>Last Voted Date</u>	<u>Original Reg. Date</u>	<u>Effective Registration Date</u>
11/03/2020	08/26/2009	12/04/2018

Miscellaneous Information

<u>Language</u>	<u>Gender</u>	<u>Assistance</u>
	Female	

Comments Former Felon-Rights restored, Per Sec Of State.

Residence Address

[REDACTED]

Mailing Address

Absentee Addresses

<u>Absentee Type</u>	<u>Address</u>
Election Specific	
Election Specific	
Election Specific	

Petitions Number

Petition Title

Valid Signatures

Move History

Effective DateResidence Address

11/14/2012

[REDACTED]

01/17/2014

[REDACTED]

05/08/2017

[REDACTED]

County: Polk

Voter Profile Report

Date : 12/16/2020

Voter ID : [REDACTED]

Alternate Names

<u>Last Name</u>	<u>First Name</u>	<u>Middle Name</u>	<u>Suffix</u>
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Voting Histories

<u>Date</u>	<u>Election Description</u>	<u>Election Participated</u>
11/03/2020	POLK COUNTY GENERAL ELECTION	VOTED
06/02/2020	Polk County Primary Election	VOTED
11/05/2019	POLK COUNTY CITY & SCHOOL ELECTION	VOTED
03/05/2019	Local Option Sales Tax Special Election	VOTED
11/08/2016	Polk County General Election	VOTED

Custom Information**Contact Information**

Home Phone [REDACTED]

Audit Log

<u>User Name</u>	<u>Modified Date</u>	<u>Effective Date</u>	<u>Description</u>	<u>Old Value</u>	<u>New Value</u>
szeni	08/24/2020	12/04/2018	New Absentee Request		New Absentee Request
jfitzgerald	05/05/2020	01/01/0001	Correspondence Notice		Voter Registration Acknowledgement
jfitzgerald	05/04/2020	12/04/2018	New Absentee Request		New Absentee Request
jfitzgerald	05/04/2020	01/01/0001	Correspondence Notice		Voter Registration Card Requested
jfitzgerald	05/04/2020	12/04/2018	Transaction Source	State Registrar of Voters	Mail-in Registration
jfitzgerald	05/04/2020	12/04/2018	Political Party	No Party	Democrat
mhammer	12/06/2019	01/01/0001	Correspondence Notice		Registration Cancellation Notification
mhammer	12/06/2019	01/01/0001	Correspondence Notice		Registration Cancellation Notification
jchiodo	09/16/2019	09/16/2019	Split		
zpaletta	02/15/2019	12/04/2018	New Absentee Request		New Absentee Request
rmoody	12/05/2018	01/01/0001	Correspondence Notice		Voter Registration Acknowledgement
rmoody	12/04/2018	12/04/2018	Voter Status	Cancelled	Active
rmoody	12/04/2018	01/01/0001	Correspondence Notice		Voter Registration Card Requested
rmoody	12/04/2018	12/04/2018	Effective Date	11/14/2012	12/04/2018
rmoody	12/04/2018	12/04/2018	Voter Status Reason	Convicted Felon	

County: Polk

Voter Profile Report

Date : 12/16/2020

Voter ID : [REDACTED]

ssteeve	09/21/2017	01/01/0001	Correspondence Notice		Registration Cancellation Notification
ssteeve	08/01/2017	11/14/2012	Voter Status	Active	Cancelled
ssteeve	08/01/2017	11/14/2012	Voter Status Reason		Convicted Felon
ssteeve	08/01/2017	11/14/2012	Transaction Source	Department of Transportation	State Registrar of Voters
ssteeve	08/01/2017	01/01/0001	Correspondence Notice		Registration Cancellation Notification
mamadeo	05/08/2017	01/01/0001	Correspondence Notice		Voter Registration Card
mamadeo	05/08/2017	01/01/0001	Correspondence Notice		Voter Registration Card Requested
mamadeo	05/08/2017	11/14/2012	Political Party	Democrat	No Party
mamadeo	05/08/2017	11/14/2012	Split	075.0	003.0
mamadeo	05/08/2017	11/14/2012	Residential Address	Std: [REDACTED]	Std: [REDACTED]
mamadeo	05/08/2017	11/14/2012	District	Des Moines 075	Des Moines 003
mamadeo	05/08/2017	11/14/2012	Transaction Source	NCOA	Department of Transportation
jchiodo	02/11/2014	01/01/0001	Correspondence Notice		Voter Registration Card
jchiodo	02/11/2014	02/11/2014	Correspondence Notice		Voter Registration Card Requested
mamadeo	01/17/2014	01/17/2014	Notification		
mamadeo	01/17/2014	11/14/2012	Transaction Source	Election Day	NCOA
mamadeo	01/17/2014	11/14/2012	Residential Address	Std: [REDACTED], [REDACTED]	Std: [REDACTED]
mamadeo	01/17/2014	11/14/2012	Split	078.0	075.0
mamadeo	01/17/2014	11/14/2012	District	Des Moines 078	Des Moines 075
hbouten	11/26/2012	01/01/0001	Correspondence Notice		Printed/Extracted.
hbouten	11/26/2012	01/01/0001	Correspondence Notice		Printed/Extracted.
hbouten	11/14/2012	11/14/2012	Residential Address	Std: [REDACTED], [REDACTED]	Std: [REDACTED]
hbouten	11/14/2012	11/14/2012	Voter Status Reason	Inactive to Cancelled	
hbouten	11/14/2012	11/14/2012	District	Des Moines 018	Des Moines 078
hbouten	11/14/2012	11/14/2012	Effective Date	08/26/2009	11/14/2012
hbouten	11/14/2012	01/01/0001	Correspondence Notice		Voter Registration Card Requested
hbouten	11/14/2012	11/14/2012	Source of Update	Duplicate Registration Received	Administrative
hbouten	11/14/2012	11/14/2012	Transaction Source	Administrative Action	Election Day
hbouten	11/14/2012	11/14/2012	Voter Status	Cancelled	Active
hbouten	11/14/2012	11/14/2012	Split	018.0	078.0

County: Polk

Voter Profile Report

Date : 12/16/2020

Voter ID : [REDACTED]

hbouten	11/14/2012	11/14/2012	Election Day Registration		11/6/2012
jchiodo	03/05/2012	03/05/2012	Split	Districts Added: 750000511	
jchiodo	01/23/2012	01/23/2012	Split	Districts Added: 6403	
mscione	12/29/2011	12/29/2011	Split	040.0	018.0
mscione	12/29/2011	12/29/2011	District	DM 040	DM 018
jchiodo	12/19/2011	12/19/2011	Split	Districts Added: 6404, 6398, 100000153, 100000073	
rmoody	01/08/2010	01/01/0001	Correspondence Notice		No Activity in 4 Years
rmoody	01/08/2010	08/26/2009	Voter Status Reason	Returned Mail	Inactive to Cancelled
rmoody	01/08/2010	08/26/2009	Transaction Source	Returned Mail	Administrative Action
rmoody	01/08/2010	08/26/2009	Voter Status	Inactive	Cancelled
rmoody	01/08/2010	01/01/0001	Correspondence Notice		No Activity in 4 Years Requested
jburke	09/14/2009	08/26/2009	Source of Update		Duplicate Registration Received
jburke	09/14/2009	08/26/2009	Transaction Source	In-Office / Registration Drive	Returned Mail
jburke	09/14/2009	08/26/2009	Voter Status	Active	Inactive
jburke	09/14/2009	08/26/2009	Voter Status Reason		Returned Mail
balthaus	08/31/2009	08/31/2009	Correspondence Notice		Printed/Extracted.
balthaus	08/26/2009	08/26/2009	New Voter Record		New voter record created
balthaus	08/26/2009	08/26/2009	Correspondence Notice		Voter Registration Card Requested