

IN THE SUPREME COURT OF IOWA

IOWA CITIZENS FOR COMMUNITY IMPROVEMENT, a nonprofit corporation, and FOOD & WATER WATCH, a nonprofit corporation,

Plaintiff-Appellees,

v.

STATE OF IOWA; DEPARTMENT OF NATURAL RESOURCES; BRUCE TRAUTMAN, in his official capacity as Acting Director of the Department of Natural Resources; ENVIRONMENTAL PROTECTION COMMISSION; MARY BOOTE, NANCY COUSER, LISA GOCHENOUR, REBECCA GUINN, HOWARD HILL, HAROLD HOMMES, RALPH LENTS, BOB SINCLAIR, JOE RIDING, in their official capacities as Commissioners of the Environmental Protection Commission; NATURAL RESOURCE COMMISSION; MARCUS BRANSTAD, RICHARD FRANCISCO, LAURA HOMMEL, TOM PRICKETT, PHYLLIS REIMER, DENNIS SCHEMMEL, and MARGO UNDERWOOD, in their official capacities as Commissioners of the Natural Resource Commission; DEPARTMENT OF AGRICULTURAL AND LAND STEWARDSHIP; and MICHAEL NAIG, in his official capacity as Secretary of Agriculture.

Defendant-Appellants.

Sup. Ct. No. _____

APPLICATION FOR INTERLOCUTORY APPEAL (TRIAL COURT NO. EQCE084330)

CLERK OF SUPREME COURT

OCT 01, 2019

ELECTRONICALLY FILED

COMES NOW Defendant-Appellants, pursuant to Iowa Rule of Appellate Procedure 6.104(1), and in support of this Application for Interlocutory Appeal state as follows:

INTRODUCTION

1. “Iowa is largely defined by its proud and rich agricultural economy. Approximately ninety percent of the land within its borders is devoted to agriculture, and the presence of agriculture in Iowa not only profoundly impacts all its residents, but, literally, the world beyond.” *Worth Cty. Friends of Agric. v. Worth Cty.*, 688 N.W.2d 257, 259 (Iowa 2004). The environmental impact of this fertile heritage on the state’s water quality has been the subject of “difficult debate and discourse” for decades. *Id.* at 260.

2. In 2018, the Iowa legislature enacted Senate File 512 (2018), declaring the state should implement the Iowa Nutrient Reduction Strategy (NRS) in order to effectively evaluate progress of nutrient reduction. *See* Iowa Code § 455B.177(3). Senate File 512 created the Water Quality Infrastructure Fund and the Water Quality Financial Assistance Fund, each of which are estimated to receive approximately \$141,000,000.00 and \$129,200,000.00, respectively, from 2019-2030, for a total of \$270,200,000.00. Fiscal Note, Senate File 512, p. 4 Table 2 (Jan. 31, 2018) (available at <https://www.legis.iowa.gov/docs/publications/FN/917568.pdf>).

The Water Quality Infrastructure Fund will support edge-of-field and in-field infrastructure projects for conservation structures or practices on agricultural land, and the Water Quality Financial Assistance will support projects in multiple programs directed at water quality improvement.

3. Plaintiff-Appellees, two nonprofit advocacy organizations, filed a lawsuit on March 27, 2019, seeking a judicial declaration the State of Iowa has violated the public trust doctrine as secured by Section 25 of Article I of the Iowa Constitution for failing to adequately protect the public's recreational and drinking water use, and a declaration that Section 20 of Senate File 512, which establishes Iowa's policy for assessing and reducing nutrients in surface waters, is null and void. Moreover, they seek the extraordinary remedy of injunctive relief that both suspends state laws applicable to concentrated animal feeding operations ("CAFOs"), and requires the adoption and implementation of a court-ordered water quality plan for the Raccoon River watershed that satisfactorily reduces nitrogen and phosphorus from agricultural nonpoint sources and CAFOs. They argue that the public trust doctrine and the Iowa Constitution compel the judicial branch to step in for the Iowa General Assembly and make policy determinations in place of the Iowa General Assembly, the Department of Natural Resources,

the Environmental Protection Commission, the Natural Resource Commission, and the Iowa Secretary of Agriculture.

4. Defendant-Appellants filed a motion to dismiss on April 29, 2019, on the following grounds: (1) Plaintiff-Appellees lacked standing; (2) the claims involve non-justiciable political questions; and (3) the Iowa Administrative Procedure Act, Iowa Code chapter 17A, provided Plaintiff-Appellees their exclusive mechanism within which to bring their claims.

5. Plaintiff-Appellees filed a resistance to the motion on May 10, 2019. The parties appeared for a hearing in the Iowa District Court for Polk County on June 19, 2019.

6. The district court denied Defendant-Appellants' motion to dismiss in an order filed on September 10, 2019. (Exhibit A).

APPLICATION FOR INTERLOCUTORY APPEAL

7. The decision whether to grant an application for interlocutory appeal depends on the “substantial rights of the parties and the interests of judicial efficiency.” *Buechel v. Five Star Quality Care, Inc.*, 745 N.W.2d 732, 735 (Iowa 2008); *see also* Iowa R. App. P. 6.104 (“the applicant shall state with particularity the substantial rights affected by the ruling or order, why the ruling or order will materially affect the final decision, and why a determination of its correctness before trial on the merits will better serve the

interests of justice.”) “[T]he most significant consideration in the granting of interlocutory appeals is whether the interest of sound and efficient judicial administration can best be served by allowing certain rulings to be appealed in advance of final judgment even if those determinations will ultimately be reviewable upon conclusion of the litigation.” *Hammer v. Branstad*, 463 N.W.2d 86, 89 (Iowa 1990).

Defendant-Appellants’ Substantial Rights Will Be Affected By the Order

8. By denying the Defendant-Appellants’ motion to dismiss, the district court has allowed a lawsuit to go forward that seeks, in the court’s own words, “review of the legislature’s actions and inactions related to policy.” Ex. A at 9.

9. While recognizing it is within the province of the court to declare void a statute inconsistent with the Iowa Constitution, it is “a well-established principle that the courts will not intervene or attempt to adjudicate a challenge to a legislative action involving a ‘political question.’” *King v. State*, 818 N.W.2d 1, 16 (Iowa 2012). The political question doctrine excludes from judicial review those controversies which revolve around policy choices and value determinations constitutionally committed to the General Assembly or the Executive Branch. *Id.* at 17. The trial court’s ruling affects the substantial

rights of the Iowa General Assembly to exercise its legislative authority as granted to it by the Iowa Constitution. Iowa Const. Art. III, § 1.

10. The trial court ruled that an injunction suspending certain statutes and providing a directive for mandatory water quality policy does not violate the political question doctrine. Ex. A at 6-8. In effect, the trial court ruled that decades of policy determinations involving scientific research, economic analyses, social and environmental priorities, financial abilities, and federal guidance, which together make up each law enacted by the Iowa General Assembly, are now subject to scrutiny by the trial court for determination of whether the Iowa Legislature has properly balanced these priorities. Further, through its injunctive powers, the court ruled it may suspend laws not being challenged in this action, and it may order the Iowa General Assembly to comply with a mandatory remedial plan requiring the passage of new laws.

11. The trial court's ruling affects the substantial rights of every farmer in the state of Iowa. Iowa farms are nonpoint sources of nitrogen and phosphorous that are not subject to regulation. Indeed, no state in the nation regulates nonpoint sources of nitrogen and phosphorous. Plaintiff-Appellees seek regulation of every agricultural nonpoint source to limit nitrogen and phosphorous in the Raccoon River watershed. Petition at 22. The trial court agrees that it has the power to impose restrictions on nonpoint sources of

nitrogen and phosphorous through its injunctive powers, producing significant uncertainty and concern for farmers.

12. The trial court's ruling affects the substantial rights of hog and cattle farmers in the State of Iowa. Plaintiff-Appellees seek an injunction preventing the construction and operation of CAFOs in the Raccoon River watershed. Petition at 22. Any such injunction will require the suspension of laws and regulations not being challenged in the lawsuit providing for the construction and operation of CAFOs. The trial court agreed with the Plaintiff-Appellees that such injunctive relief is within its power to grant. Ex. A at 8.

The Ruling Will Materially Affect the Final Decision

13. Litigation seeking a court order requiring the Iowa General Assembly to comply with a nutrient reduction policy adopted by the trial court strikes at the heart of the constitutionally delegated legislative authority granted exclusively to the Iowa General Assembly. Iowa Const. Art. III, § 1. How to manage Iowa's water resources is strictly a political question for the elected legislative representatives of the state to research, debate and ultimately codify in statute.

14. The political question doctrine prevents lawsuits like the one filed by Plaintiff-Appellees from proceeding to trial. The trial court, however,

held “Defendants’ argument cannot prevail where the federal government has failed to extend the political question doctrine to the court and the State has not acted to apply it on its own.” Ex. A at 7. The trial court has, therefore, eliminated the political question doctrine as a defense Defendant -Appellants may raise.

15. By eliminating the political question doctrine as a defense, the trial court has already concluded it has the authority to adopt a mandatory water policy and impose this policy on the Iowa General Assembly. This ruling materially affects the final decision in that a compelling separation of powers defense is lost to Defendant-Appellants that would otherwise prevent this lawsuit from moving beyond the motion to dismiss stage.

A Determination Before Trial Will Better Serve the Interests of Justice

16. Plaintiff-Appellants’ lawsuit places decades of nutrient reduction research and policy decisions made by the Iowa General Assembly, the Secretary of Agriculture, and numerous appointed commissioners on trial, along with several statutes and volumes of administrative rules and rulemaking histories from different agencies. The time and resources of the state necessary for discovery and to prepare for a trial will be unprecedented.

17. Furthermore, a ruling by the trial court imposing nitrogen and phosphorous restrictions on nonpoint agricultural sources would be a first in

the nation and a dramatic shift from present-day agricultural practices. The continued litigation will produce substantial uncertainty and grave concerns for every member of Iowa's agricultural economy, with unknown effects rippling throughout the country.

18. Taking this interlocutory appeal will allow the Iowa Supreme Court to give certainty to the applicable legal standards for standing in environmental cases, the political question doctrine and the Iowa Administrative Procedures Act in this action.

19. This case is suitable for interlocutory appeal because of the significant issues at stake. *See Banco Mortg. Co. v. Steil*, 351 N.W.2d 784 (Iowa 1984) (explaining that interlocutory appeals are properly granted in exceptional circumstances when the interests of sound and efficient judicial administration are best served).

WHEREFORE, Defendant-Appellants respectfully request this application for interlocutory appeal be granted.

Respectfully submitted,

THOMAS J. MILLER
Attorney General of Iowa

JEFFREY S. THOMPSON
Solicitor General

/s/ Jacob J. Larson
JACOB J. LARSON

/s/ David S. Steward
DAVID S. STEWARD

/s/ Eric M. Dirth
ERIC M. DIRTH

/s/ Thomas J. Ogden
THOMAS J. OGDEN
Assistant Attorneys General
Department of Justice
Hoover State Office Building, 2nd Floor
1305 E. Walnut St.
Des Moines, IA 50319
Phone: (515) 281-8760
Fax: (515) 281-4209
Email: jacob.larson@ag.iowa.gov
david.steward@ag.iowa.gov
eric.dirth@ag.iowa.gov
thomas.ogden@ag.iowa.gov

ATTORNEYS FOR DEFENDANT-
APPELANTS

E-filed with copy via email to:

Roxanne Conlin
Devin Kelly
Roxanne Conlin & Associates, P.C.

Channing Dutton
Lawyer, Lawyer, Dutton & Drake, LLP

Brent Newell
Public Justice, P.C.

Tarah Heinzen
Food & Water Watch

Attorneys for Plaintiffs