

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

KIM SCHMETT and LEANNE PELLETT,
Petitioners,

v.

STATE OBJECTIONS PANEL,
Respondent,

ABBY FOR IOWA,
Intervenor.

Case No. 05771 CVCV063390 (POLK)

**INTERVENOR’S REPLY
MEMORANDUM OF LAW IN
RESPONSE TO PETITIONERS’
MEMORANDA OF LAW**

COMES NOW Intervenor Abby for Iowa, through counsel, and in further support of affirming the decision of the State of Iowa Objections Panel (the “Panel”) (*see* ECF No. 18, filed April 6, 2022), offers the following Reply Memorandum of Law in response to Petitioners’ Memoranda of Law in Support of Petition for Judicial Review (ECF 20, filed April 6, 2022; ECF No. 23, filed April 7, 2022).

PETITIONERS LACK STANDING AND THEIR CLAIMS ARE NOT RIPE

Petitioners ask this Court to grant them standing to challenge Ms. Finkenauer’s right to appear on the ballot for the June 7 Democratic Primary Election—an election in which they are *ineligible* to vote because “they are registered republicans now.” (ECF No. 20 at 9). Notably, Petitioners’ Memoranda fail to respond to Intervenor’s ripeness argument. (*See* ECF No. 18 at 5-6.) Instead, Petitioners argue that they hypothetically “*can* be registered Democrats on or before the June 7, 2022, primary election,” (ECF No. 20 at 9 (emphasis added)), even though they are currently registered Republicans, thereby ignoring the Iowa Supreme Court’s mandate that “[i]f a claim is not ripe for adjudication, a court is without jurisdiction to hear the claim and must dismiss it.” (ECF No. 18 at 5 (quoting *Iowa Coal Mining Co. v. Monroe Cnty.*, 555 N.W.2d 418, 432 (Iowa

1996)).) Because Petitioners are not currently registered Democrats, they are not currently eligible to vote in the June 7 Democratic Primary Election. Accordingly, their claims are simply not ripe for adjudication.

Petitioners fault Intervenors for “suggesting a cramped reading” of Iowa Code § 43.24(1)(a), arguing that it lacks “any same-party restriction” and that Petitioners “have the right to vote at the general election for the office of U.S. Senator.” (ECF No. 20 at 9.) These arguments are misleading. Section 43.24(1)(a) limits the persons who may file “[o]bjections to the legal sufficiency of a nomination petition” to those “who would have the right to vote for the candidate for the office in question” under Section 43.38, which allows electors only “to vote for candidates for nomination on the ballot of the *party with which the elector is registered as affiliated.*” See Iowa Code §§ 43.24(1)(a), 43.38 (emphasis added). Petitioners object to Ms. Finkenauer’s “Nomination Petition for Primary Election”—an election in which Petitioners are admittedly ineligible to vote. The fact that they may be eligible to vote for her in the general election is irrelevant, as that is not the election at issue in this case, and Ms. Finkenauer cannot even run in “the general election for the office of U.S. Senator” unless she first wins the June 7 Democratic Primary Election. (See ECF No. 20 at 9.)

**MISSING OR MISTAKEN DATES PROVIDE NO BASIS UNDER
PRECEDENT OR STATUTE FOR NOT COUNTING SIGNATURES**

Petitioners argue that the Panel’s decision to overrule their objections to Ms. Finkenauer’s signatures with missing or mistaken dates “was contrary to the rule it used in the morning and contrary to the statutory requirement that the signer provide the date of his or her signature.” (ECF No. 20 at 14.) These arguments ignore that the Panel’s morning decision was the outlier and that the statutory requirement that signers provide the date does not mandate that signatures with missing or mistaken dates *not be counted*.

First, the inconsistency between the Panel’s *morning* decision regarding Attorney General Miller’s Nominating Petition and its *afternoon* decision regarding Ms. Finkenauer’s Nominating Petition provides no basis for reversal, especially given that the *morning* decision was the outlier. As explained in more detail in Respondent’s Brief on Judicial Review (ECF No. 22 at 7-9), the Panel has regularly declined to strike signatures for missing or mistaken dates. *See, e.g., In the Matter of the Nominating Pet. of Jon Dvorak, Findings of Fact, Conclusions of Law, Decision and Order*, at 5 (1988); *In the Matter of Objection to the Nomination Pet. of Paul Johnson, Findings of Fact, Conclusions of Law, Decision and Order* at 11 (2004). Moreover, this Court has found that “Section 43.14 expressly provides for substantial compliance.” *Narcisse v. Iowa Sec’y of State*, Ruling on Pet. for Jud. Rev. at 2, No. CVCV47388 (March 27, 2014); ECF No. 22 at 8-9.¹

Second. Petitioners cite no authority for their assertion that “the date of signing cannot come from another voter’s date of signing [or] from the person who circulated the petition.” (*See* ECF No. 20 at 13.) Nor do Petitioners provide support for their argument that signers must provide the date of their signature to prevent fraud. (*See id.*) Most importantly (and despite their emphasis on statutory interpretation), Petitioners fail to grapple with the fact that, regardless of whether or why dates are mandatory on nomination petitions, missing or mistaken dates—unlike other discrepancies—do not provide a statutory basis for not counting signatures under Iowa law. *See* Iowa Code § 43.14(c),(d).²

¹ Petitioners’ reliance on other states’ requirements for nomination petitions is unavailing, as those policies are not remotely binding on Iowa. *See also* ECF No. 22 at 9, n.3. Moreover, the out-of-state cases cited by Petitioners stand only for the proposition that mandatory statutory requirements cannot be satisfied by “substantial compliance,” but, as explained, the Iowa Code does not include date discrepancies as a mandatory basis for not counting signature lines.

² Petitioners’ references to the informational requirements of Sections 43.14(2)(a) and 43.18 are irrelevant; such sections require information about the *candidate*, not the voter. *See* ECF No. 20 at 17; *see also* Respondent’s Brief on Judicial Review, ECF No. 22, at 9. Similarly, Petitioners’

CONCLUSION

As explained in Intervenor’s Memorandum of Authorities (ECF No. 18) and above, Petitioners lack standing, their claims are not ripe, and their objections have no basis in fact or law.³ The Court should affirm the Panel’s decision dismissing Petitioners’ Objections to Ms. Finkenauer’s Nomination Petition.

Respectfully submitted,



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**Application for Admission Pro Hac Vice Pending*

reliance on *League of United Latin American Citizens of Iowa v. Pate*, 950 N.W.2d 204 (2020), is inapposite, as it pertains to missing information on an *absentee ballot request form*, as opposed to a nomination petition.

³ Intervenor generally agrees with Respondent’s arguments as to why members of the Panel were not required to recuse themselves. (*See* ECF No. 22 at 3-7.)