

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

<p>KIM SCHMETT and LEANNE PELLETT, Plaintiffs, v. STATE OBJECTIONS PANEL, Respondent.</p>	<p>No.  PETITION FOR JUDICIAL REVIEW (EXPEDITED CONSIDERATION REQUESTED)</p>
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Plaintiffs Kim Schmett and Leanne Pellett seek judicial review of the decision of the State Objections Panel to deny their objections to the nomination petition of Abby Finkenauer, a candidate for U.S. Senator.

**Nature of Agency Action Subject to the Petition**

1. The State Objections Panel is a body created by Iowa Code § 43.24(3)(a) to adjudicate objections to the legal sufficiency of a nomination petition filed by a candidate for federal office, statewide office, or the state legislature. No provision of law vests the panel with the authority to interpret Iowa election law in the discretion of the panel.

2. The members of the State Objections Panel, unless recusal is required, are the Secretary of State, Auditor of State, and Attorney General. The panel's members are subject to the rules of disqualification found in Iowa Code § 17A.11(2). The law

states panel members are “subject to disqualification for bias, prejudice, interest, or any other cause provided in this chapter or for which a judge is or may be disqualified.”

3. On March 29, 2022, the panel met to hear objections to the nomination petitions of candidates. Plaintiffs had filed an objection to the nomination petition of Abby Finkenauer, a candidate for U.S. Senator.

**Agency Action Appealed From**

4. Before the hearing, the objectors submitted an affidavit that requested Auditor of State Rob Sand and the Attorney General Tom Miller recuse themselves from deciding the objections. The objectors renewed this request before the panel began considering the objection. Both the Auditor of State and Attorney General refused to recuse themselves.

5. At the conclusion of the hearing, the panel voted 2-1 to deny the objection to the Finkenauer petition. The Secretary of State voted in favor of granting the objection. The Auditor of State and Attorney General voted to deny the objection.

**Venue**

6. Venue for a judicial review action is always appropriate in Polk County. Iowa Code § 17A.19(2).

**Grounds for Relief:**

**I. The State Objections Panel denied objections to signatures where the signer had not provided the date of the signature.**

7. A candidate for U.S. Senator needs signatures from not less than 3,500 eligible electors on her nominating petition. Iowa Code § 45.1(1). In addition, the candidate must have signatures of at least 100 eligible electors from at least 19 counties in the district. *Id.* Finkenauer submitted a nomination petition that purported to have 20 counties that met the 100-signature requirement.

8. A signature line on a nominating petition must be dated by the signer. Iowa Code § 43.15(2) (“The following *requirements* shall be observed in the signing and preparation of nomination blanks: ... (2) Each signer shall add the signer’s residential address, with street and number, if any, and the date of signing.”) (emphasis added).

9. Despite the clear instruction of the law that the date of signing is a requirement[] of a valid signature, the panel denied objections to undated signatures. Specifically, the panel denied an objection to one signature from Allamakee County and two signatures from Cedar County.

10. Had the panel granted the objection to either the Allamakee County or Cedar County signatures, Finkenauer would not have met the requirement to submit at least 100 valid signatures in 19 or more counties. The objection to her nomination petition should, therefore, have been sustained.

11. Because the panel denied the objection to the Finkenauer petition based on an erroneous interpretation of law that had not been clearly vested by a provision of law in the panel, and that error violated the substantial rights of the objectors, the Court should reverse the panel's decision and order that the objection to Finkenauer's nomination petition be sustained. Iowa Code § 17A.10(c).

**II. The Auditor of State and Attorney General were required to recuse themselves from hearing the objection.**

12. The Auditor of State was required to recuse himself from hearing the objection because of demonstrated personal bias against the attorney for the objectors. The attorney, in his capacity as the president and chief counsel of a nonprofit public-interest law firm, had filed an action against the Office of the State Auditor, Auditor Sand, and Sand's chief of staff John McCormally. Although the existence of the lawsuit would not ordinarily be grounds for recusal, Auditor Sand's spokesperson called counsel for objectors a "political hack" in a statement issued in response to the filing of the lawsuit. The demonstrated lack of impartiality on the part of Auditor Sand required his recusal.

13. The Attorney General was also required to recuse himself. An objection had also been filed to Miller's nomination petition seeking reelection to the office of Attorney General. The Miller objections were based on substantially the same legal arguments as those raised in the Finkenauer objections. Under Iowa Code

§ 43.24(3)(a), Miller was recused from the consideration of the objections to his own petition. He was replaced by the Lieutenant Governor.

14. During the hearing on the Miller objections, the panel considered objections based on missing, incomplete, and inaccurate dates provided by petition signers. The panel upheld those objections by 2-1 votes, with the Secretary of State and Lieutenant Governor voting in the affirmative and the Auditor of State voting in the negative.

15. The objection to the Miller petition was denied, the panel having determined he exceeded the minimum number of signatures required by a margin of two.

16. The panel then reconstituted to consider the objection to the Finkenauer petition. The objectors reiterated their recusal request to the Attorney General and pointed out that there was still a live legal dispute regarding his petition because of the possibility of judicial review of the denial of the objection. The objectors pointed out that under Chapter 17A, there is a mechanism for an alternate decision maker to be appointed to a board.

17. The Attorney General refused to recuse himself. He stated that the issues had been resolved in the objection to his petition, that he had a statutory obligation to serve on the panel and decide the objections, and that he would follow the panel's precedent.

18. Despite his promise to follow the panel's precedents, the Attorney General voted to reject challenges to signatures on the Finkenauer petition that were based on inaccurate or missing dates. Thus, the substantive rule being applied by the State Objection Panel changed because of Miller's refusal to recuse himself.

19. Had the panel applied its precedents from its consideration of the Miller petition to the objection to the Finkenauer petition, it would have granted the objections to the Allamakee County and Cedar County signatures and sustained the objection to her nomination petition.

20. The Court may reverse the decision of the panel when it violates the plaintiffs' substantial rights and was "[t]he product of decision making undertaken by persons who were...subject to disqualification," Iowa Code § 17A.10(e).

### **The Relief Sought**

21. The plaintiffs request the Court reverse the panel's denial of the objection to the Finkenauer petition and order that the objection be sustained. In the alternative, the Court should order the matter remanded to the agency for a hearing before a panel with members not subject to disqualification and appointed as provided by Iowa Code § 17A.11(5).

22. The plaintiffs have submitted with this petition an application for expedited consideration due to the need to finalize and print ballots for the June 7, 2022 primary election.

Respectfully submitted,

By: /s/ Alan R. Ostergren  
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