IN THE SUPREME COURT OF IOWA

KIM SCHMETT AND LEANNE PELLETT,
Petitioners/Appellees,

v.

STATE OBJECTIONS PANEL,
Respondent/Appellant,

ABBY FOR IOWA,
Intervenor-Respondent/Appellant

No. 22-0618

FINAL BRIEF OF APPELLEES

Appeal from the Iowa District Court for Polk County
Hon. Scott J. Beattie, District Judge
Case No. CVCV063390

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CERTIFICATE OF SERVICE

The undersigned certifies that this brief has been served on April 12, 2022, through electronic filing as provided by the rules of the Court.

/s/ Alan R. Ostergren
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ROUTING STATEMENT

The Iowa Supreme Court has ordered that it will retain this appeal and consider it on an expedited basis.

STATEMENT OF THE CASE

Nature of the Case

This is an appeal from the district court's reversal of the decision of the State Objections Panel to deny an objection to the nomination petition of Abby Finkenauer, a candidate for nomination of the Democratic Party for the office of U.S. Senator.

Course of Proceedings

Finkenauer filed her petition, along with an affidavit of candidacy, in the office of the Secretary of State on March 10, 2022. The filing period ended March 18, 2022. On March 25, 2022, objectors Kim Schmett and Leanne Pellett filed a written objection to the Finkenauer petition. The objection was heard by the State Objections Panel on March 29, 2022. The panel denied the objection by a vote of 2-1.

On March 31, 2022, objectors petitioned for judicial review in Polk County District Court challenging the denial of their objection. The court conducted oral argument on April 6, 2022 and permitted the parties to submit briefs. The district court ruled on April 10, 2022, finding that the panel's interpretation of Iowa law was incorrect and that the objection to the Finkenauer petition should have been sustained. The panel and the Finkenauer campaign (who had intervened before the district court) filed a notice of appeal on April 11, 2022.

STATEMENT OF THE FACTS

To qualify for the primary ballot, 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.*

On March 25, 2022, two electors filed their objection to the Finkenauer petition. Their objection cited several deficiencies in the

nomination petition sheets, including improperly dated signatures lines, a petition sheet that had missing information in the header, signature lines that had only a partial address, and certain duplicate signatures. Because of these deficiencies, Finkenauer did not have the mandatory 19 counties where she submitted at least 100 signatures.

The panel denied an objection to one signature from Allamakee County and two signatures from Cedar County. Because Finkenauer was left with 100 signatures in Allamakee County and 101 in Cedar County, the enforcement of the signature date rule would have left her without enough counties that reached the 100-signature threshold to qualify for the ballot. The panel's justification for not enforcing the Code's date of signature requirement was panel precedent where it had adopted a "substantial compliance" standard. The panel interpreted this standard to mean that a signature line could be counted so long as there was other information on the petition sheet from which the date could be guessed.

Additional facts will be presented as necessary below.

ARGUMENT

I. Signatures on nominating petitions must be dated by the signer of the petition. For three signatures on the Finkenauer petition for U.S. Senate, the elector failed to put the date he or she signed it. If these signatures are not counted, Finkenauer failed to qualify for the ballot. Did the district court correctly rule that the ballot objection based on these undated signatures should have been sustained?

A. Standard of Review

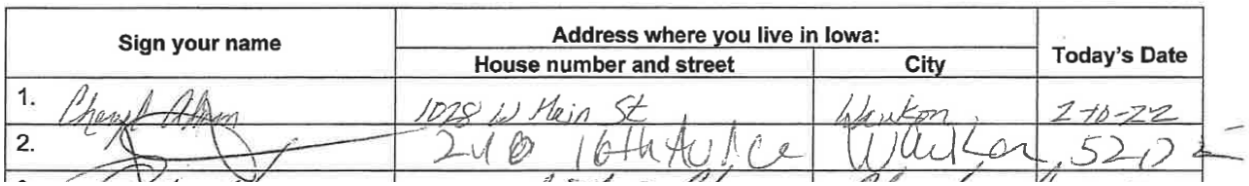
When the legislature has not clearly vested an agency with interpretive authority of statutory language, review of its decisions is for errors of law. *Colwell* v. *Iowa Dep't of Human Services*, 923 N.W.2d 225, 231 (Iowa 2019).

B. Preservation of Error

Because the Court has ordered simultaneous filing of briefs in this expedited appeal, the objectors cannot state whether the arguments of the panel or intervenor on appeal were preserved below.

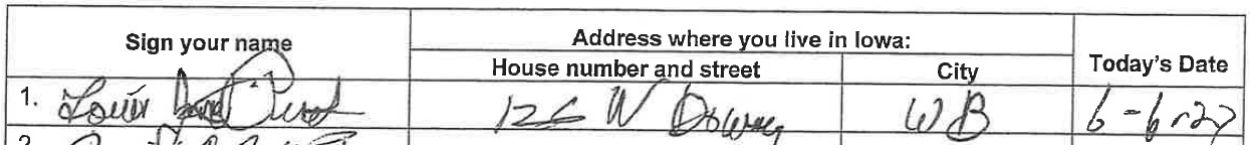
C. Three signatures on the Finkenauer petition were undated. The panel's "substantial compliance" standard has no basis in Iowa law and cannot save these signatures.

Objectors challenged three signatures relevant to this action. The first was an undated signature from page 10, line 2 of Finkenauer's Allamakee County petition:



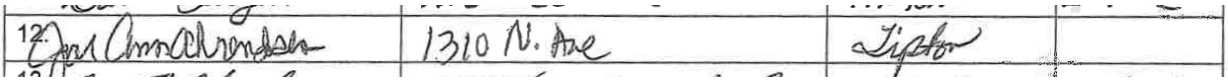
Sign your name	Address where you live in Iowa:		Today's Date
	House number and street	City	
1.	1028 W Main St	Waukon	2-10-22
2.	240 16th Ave	Waukon	52[illegible]

Objectors also challenged two signatures from Cedar County. The first was from page 6, line 1 with an obviously incorrect date of 6-6-27:



Sign your name	Address where you live in Iowa:		Today's Date
	House number and street	City	
1.	126 W Dolores	WB	6-6-27

And the second was from page 10, line 12 that was undated:



12.	1310 N. Ave	Lipton	

If the panel would have sustained the Allamakee County signature objection, Finkenauer would have been left with only 99 valid signatures from that county. Similarly, if the panel would have sustained the Cedar County signature objections, she would have also

had only 99 valid signatures there. The loss of either county from her 100-signature list would have meant she failed to qualify for the ballot.

1. A petition signer must personally add the date he or she signed the petition

The requirement that the individual signer provide the date of signing comes from 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). Of course, no substantial compliance standard can be gleaned from this language, for these are "requirements" that "shall be observed." And the date of the signature is not something that can simply be assumed from other information on the sheet. "*Each signer* shall add *the signer's*…date of signing." *Id.* In other words, the date of signing cannot come from another voter's date of signing, nor can it come from the person who circulated the petition.

Requiring the signer to personally date his or her signature is an important measure to prevent fraud in the nomination petition

process. Unlike casting a ballot, an act that takes place under the supervision of elections officials, gathering of petition signatures is conducted by candidates and campaigns themselves. The law sensibly requires the petition signer to personally provide his or her address and date of signing. Requiring this information to come from the signer, not the candidate, helps ensure that a sheet of signatures is what it purports to be: an expression of genuine support for the candidacy rather than a fiction created by a desperate candidate. [1]

Intervenor points to Iowa Code § 43.14(2)(c) and (d) to permit undated signatures to be counted. True, these code sections give examples of why lines on a petition page could not be counted and an undated signature is not specifically listed. But intervenor cannot

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[1] Fraud of this kind is hardly unknown. In 2018 a federal candidate's campaign ended abruptly when her campaign manager admitted to forging signatures on her nomination petition. https://www.desmoinesregister.com/story/news/politics/2019/04/07/congress-3rd-district-iowa-theresa-greenfield-apologizes-falsified-signatures-register-ad/3393810002/ (last visited April 5, 2022).

point to any language in this code section to show that these are an *exclusive* list of reasons why a signature line cannot be counted. Because of this, intervenor's invocation of the negative-implication canon of statutory interpretation misses the mark.

"Virtually all the authorities who discuss the negative-implication canon emphasize that it must be applied with great caution, since its application depends so much on context." Antonin Scalia & Bryan A. Garner, Reading Law: The Interpretation of Legal Texts 107 (2012). "When a car dealer promises a low financing rate 'to purchasers with good credit,' it is entirely clear that the rate is *not* available to purchasers with spotty credit." *Id.* "The doctrine properly applies only when…the thing specified can reasonably be thought to be an expression of *all* that shares in the grant or prohibition involved." *Id.* "The sign outside a restaurant 'No dogs allowed' cannot be thought to mean that no other creatures are excluded—as if pet monkeys, potbellied pigs, and baby elephants might be quite welcome." *Id.*

Intervenor's statutory argument would read the date-of-signature requirement out of the code. It would literally take something called a "requirement" and make it optional. But it is a principle of statutory interpretation that courts will "presume statutes or rules do not contain superfluous words." *Iowa Ins. Institute* v. *Core Group of Iowa Ass'n for Justice*, 867 N.W.2d 58, 75 (Iowa 2015); see also Iowa Code § 4.4(2) (presumption that "[t]he entire statute is intended to be effective").

"When interpreting the meaning of a statute, we start with the statute's text." *Calcaterra* v. *Iowa Bd. of Medicine*, 965 N.W.2d 899, 904 (Iowa 2021). "If statutory language in its proper context is unambiguous, we do not look past the plain meaning of the words." *Id.* Considerations of alternative views of the policy considerations involved is not the basis to ignore the plain meaning of a statute's text. *Id.* at 908. Words like "requirement" and "shall" must be given their plain meaning. "Shall" imposes a duty. Iowa Code § 4.1(30)(a). "[W]e have interpreted the term 'shall' in a statute to create a mandatory

duty, not discretion." *State* v. *Klawonn*, 609 N.W.2d 515, 522 (Iowa 2000). Similarly, a "requirement" is "something that must be done because of a law or rule; something legally imposed, called for, or demanded; an imperative command." Black's Law Dictionary 1561 (11th ed. 2019).

Rules of statutory interpretation should be applied consistently, regardless of the perception of the statute's overall salutary purpose. For example, in construing language in the Iowa Civil Rights Act, the Court—although mindful that the statute shall "be construed broadly to effectuate its purposes"—cannot go beyond "a fair interpretation" of what its words mean. *Vroegh* v. *Iowa Dep't of Corrections*, ___ N.W.2d ___, 2022 WL 981824 at*24 (Iowa). "We effectuate the statute's "purposes" by giving a fair interpretation to the language the legislature chose; nothing more, nothing less. 'Sex' doesn't expand to 'gender identity' (or anything other than 'sex') simply because the statute contains an instruction that it be 'construed broadly.'" *Id.* Likewise, although "it is correct that we interpret workers'

compensation statutes in favor of the worker, we still must interpret the provisions within…the statutory scheme 'to ensure our interpretation is harmonious with the statute as a whole.'" *Chavez* v. *MS Technology LLC*, ___ N.W.2d ___, 2022 WL 981813, at *10 (Iowa).

A fair reading of the date-of-signature requirement shows it is exactly that: a requirement for a valid signature. The fact that there are other reasons why a signature line should not be counted does not mean the word "requirement" somehow becomes the word "suggestion." Because the statute requires a date for a valid signature and these three signatures were undated, they cannot be added to Finkenauer's total.

The panel never made a substantial effort to show that the law didn't require a date of signature. Instead, the panel's argument to the district court was that it had a long tradition of ignoring this requirement. But this tradition has no basis in Iowa law and was properly rejected by the district court.

2. A substantial compliance standard cannot be found in Iowa election law or decisions of this Court

No Iowa appellate court decision has construed the legal standard to apply to the consideration of challenges to nomination petitions for the failure to comply with statutory requirements. But familiar legal principles from other Iowa cases, combined with decisions from other states considering challenges to nominating petitions, make clear that "close enough" is not the correct standard. The Iowa legislature has promulgated rules about how a candidate gets on the ballot. The statutes mean what they say, and candidates simply need to follow them. And for the candidate who is concerned about a signature here or there being invalid, there is a simple answer: turn in more signatures than the bare minimum.

Regulation of access to the ballot serves important state interests. "It is beyond question that States may, and inevitably must, enact reasonable regulations of parties, elections, and ballots to reduce election- and campaign-related disorder." *Clingman* v. *Beaver*, 544 U.S. 581, 593 (2005). Thus, regulations dealing with ballot access "do not

compel strict scrutiny." *Id.* (citing *Bullock* v. *Carter*, 405 U.S. 134, 143 (1972)). "The general rule is that, unless there is language allowing substantial compliance, election statutes are mandatory and must be strictly complied with." *State ex rel. Simonetti* v. *Summit County Bd. of Elections*, 85 N.E.3d 728, 734 (Ohio 2017).

The panel made little effort to argue to the district court that its interpretation of the date of signature requirement was correct. Rather, the panel argued that because it has developed a "substantial compliance" standard in past decisions it would apply that precedent to the Finkenauer objection. Because the panel had, in the past, not enforced the date-of-signature requirement, the panel concluded it should continue with this tradition of nonenforcement.

Of course, the panel's use of precedent was selective. As described by the district court's order, the panel sustained an objection to an improperly dated signature when it considered an objection to the petition of Attorney General Tom Miller during the morning of the March 29 hearings. (Order 2-3). When the panel

reconvened after lunch and the Attorney General took his place on the panel, it denied the challenges to the three improperly dated signatures on the Finkenauer petition. *Id.* Had the panel applied the rule from the morning of March 29 it would have sustained the objection to the Finkenauer petition. Rather than show consistency, the panel invoked "substantial compliance" to deny the objection.

The panel argued to the district court that the definition of "substantial compliance" it used comes from *Gorman* v. *City Development Bd.*, 565 N.W.2d 607 (Iowa 1997). *Gorman* involved a voluntary annexation application that contained an incorrect legal description of the subject property but was accompanied by a map that correctly showed the property's boundaries. *Id.* at 607-08. After the city council's approval of the annexation, a neighboring landowner challenged it, claiming the incorrect legal description made it invalid. *Id.* at 608.

The city claimed the annexation was valid because there had been substantial compliance with the procedures of the annexation

law. *Id.* at 610. "We have defined substantial compliance as 'compliance in respect to essential matters necessary to assure the reasonable objectives of the statute.'" *Id.* The Court determined the erroneous legal description "did not satisfy the reasonable objectives of the statute." *Id.*

The Court gave examples where substantial compliance was sufficient. It cited a case where "the legal description listed a creek as 'Walnut Creek' when it should have been "North Walnut Creek." *Id.* (citing *Incorporated Town of Windsor Heights* v. *Colby*, 249 Iowa 802, 89 N.W.2d 157 (1958)). And to one where "there was a slight typographical error in a lengthy description of real estate." *Id.* (citing *Wall* v. *County Bd. of Education*, 249 Iowa 209, 86 N.W.2d 231 (1957)). "There, we noted the error was not made in the original document and held that it did not affect an election involving the reorganization of school districts." *Id.* "Here, the error occurred in the…original written request. It was substantial and was not corrected until after [the city] had approved the annexation." *Id.* In contrast, because the

incorrect legal description did not show substantial compliance with the statute, the annexation was void. *Id.*

Gorman's "substantial compliance" standard cannot rescue the undated signatures in the Finkenauer petition. If the incorrect legal description cannot be saved by the correct map of the property, then logically an undated signature cannot be saved because *other* people properly dated their signatures. If substantial compliance requires the reasonable objects of the statute to be observed, it cannot save these undated signatures considering the statute's direction that the date of signature is a "requirement" that "shall be observed" and that "*Each signer* shall add *the signer's*…date of signing." Iowa Code § 43.15(2) (emphasis added).

In construing other election statutes, the Court has disavowed the view that voters need not comply with neutral and nondiscriminatory rules. Thus, in *League of United Latin American Citizens of Iowa* v. *Pate*, 950 N.W.2d 204, 210 (2020), the Court declined to disturb the district court's refusal to enjoin a statute that

required voters themselves to provide complete information on an absentee ballot request form. Legitimate interests were served by placing an obligation on the *voter*, rather than an election official, to supply the information. "[The statute] directs auditors faced with 'insufficient' information on the ballot request, which might be of two types: (1) missing identification (such as a line left blank); or (2) inaccurate information provided (such as a wrong birthdate)." *Id.* "Both types of insufficient information raise potential concerns about whether the person completing the form is in fact the registered voter. *Missing* information raises a legitimate question of why it wasn't provided; *wrong* responses (such as listing a wrong birthdate) arguably give rise to even sharper questions of why the applicant supplied incorrect information." *Id.* (emphasis original).

This approach to interpretation of an election statute (which, unlike the signing of a nomination petition, implicates voting interests) lends no support to a "substantial compliance" standard. Indeed, the words "substantial compliance" or "substantially comply"

do not appear anywhere in Iowa's election laws. The legislature's directions mean little, if anything, if the panel will simply waive its hand at them and utter the phrase "substantial compliance."

In several places Iowa election law disclaims the existence of a substantial compliance test. Consider the candidate who turns in petition sheets with incomplete headers. "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." Iowa Code § 43.14(2)(a) (emphasis added). If objections are made to a nominating petition "relating to incorrect or incomplete information for information that is required under sections 43.14 or 43.18" those objections "*shall be sustained*" (emphasis added). This sentence was added by the legislature last year. 2021 Iowa Acts, Ch. 147, § 9.

There is nothing in the text of Iowa's election laws that suggests that compliance with them is not required. Consider the requirement in Iowa Code § 45.6(4) that nomination petitions sheets "shall be neatly arranged and securely fastened together before filing…" Does

substantial compliance save the candidate who shows up with a handful of loose sheets? No. "Nomination papers which are not securely fastened together shall be returned to the candidate or the candidate's designee without examination." *Id.* And setting aside candidates who die or withdraw before a deadline, a candidate who does not file as provided by Iowa Code § 43.13 will find that his or her name "not be printed on the official primary ballot…"

It is inevitable that any nomination petition will contain signatures that cannot be counted. There is a simple remedy for this: campaigns should collect more than the bare minimum number of signatures required. As the Secretary of State's guide to primary candidates[2] includes in the filing checklist:

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2 https://sos.iowa.gov/elections/pdf/candidates/2022primcandguide.pdf (last visited April 12, 2022)

☐ **Count the signatures.**

Best Practice: File more than the required number of signatures since it is possible for signatures to be challenged. If there are signatures on a petition that should not be included, simply draw a line through the names. Those signatures will not be counted.

A candidate ignores this advice at her peril.

3. Other states do not apply a "substantial compliance" standard to the requirements of a nomination petition

Iowa is no outlier in not having a substantial compliance standard in its election laws. The Illinois Supreme Court's resolution of a challenge to a nomination petition in *Jackson-Hicks* v. *East St. Louis Bd. of Election Com'rs*, 28 N.E.3d 170 (Ill. 2015) is instructive. A candidate for municipal office had turned in more than the minimum number needed but a review by the election commissioners found "at least 48 of the signatures on [the candidate's] petitions were invalid." *Id.* at 172. The candidate was left with 123 valid signatures when 136 were required. *Id.* But the commissioners declined to remove his name because the candidate showed "substantial compliance" with the requirement.

The Illinois Supreme Court rejected this analysis. "The dispositive question is whether the Election Board was correct when it interpreted the Election Code to permit the minimum signature requirement for nominating petitions to be judged based on a theory of 'substantial compliance.'" *Id.* at 175. The court held that election statutes should be subject to ordinary rules of statutory interpretation. *Id.* "When statutory language is plain and unambiguous, the statute must be applied as written without resort to aids of statutory construction." *Id.*

The candidate argued the election board had discretion to excuse his failing. Not so, according to the court. "Generally speaking, requirements of the Illinois Election Code are mandatory, not directory." *Id.* at 176. "Implicit in the law's provision that nominations may be made through nomination papers containing 'not less than' the required minimum number of signatures is that nominations may *not* be made through nomination papers containing a number of signatures which *is* less than the minimum required by law. The latter

proposition is a corollary of the former." *Id.* at 178 (emphasis original). "When the law provides that a certain threshold is required in order to win an election, it is understood that if one fails to attain the threshold, one loses. Runners-up have no claim to office on a theory that they came close enough. So it has always been in American electoral politics. So it remains." *Id.*

Similarly, the Colorado Supreme Court rejected out of hand the view that substantial compliance was the appropriate legal standard in all situations. "In our most recent analysis of the Election Code, we noted that there are some aspects of the Code that simply cannot be subject only to substantial compliance." *Griswold* v. *Ferrigno Warren*, 462 P.3d 1081, 1085 (Colo. 2020). As an example, a statutory requirement that signature collectors be Colorado residents "is not a mere technical requirement that is subject to substantial compliance. A person either is a resident for purposes of the Election Code or he is not." *Id.* The court recognized "a specific statutory command could not be ignored in the name of substantial compliance." *Id.*

This is true even when a court "liberally construes" election provisions. *In re Silcox*, 674 A.2d 224, 225 (Pa. 1996) ("The language of this statute clearly requires the elector to sign the petition, add his occupation and residence, and also add the date of signing. When the words of a statute are clear and free from ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit.") "It is well-settled that the 'so-called technicalities of the Election Code' must be strictly enforced, 'particularly where…they are designed to reduce fraud.'" *In re Scroggin*, 237 A.3d 1006, 1018 (Pa. 2020).

"Strict compliance with the requirements of the Election Law is mandates as to matters of prescribed content of nominating petitions." *DeBerardinis* v. *Sunderland*, 714 N.Y.S.2d 858 (N.Y. Gen. Term 2000). "[T]he requirement that each signature be dated is a requirement of content and not merely one of form." *Id.* "It is wholly immaterial that the courts might reasonably conclude that what they perceive as the ultimate legislative objectives might better be achieved by more flexible prescriptions, prescriptions which might be judged

by some to be more equitable. Whatever may be our view, the Legislature has erected a rigid framework of regulation, detailing as it does throughout specific particulars." *Hutson* v. *Bass*, 426 N.E.2d 749, 774 (N.Y. 1981).

An Illinois case illustrates when substantial compliance is the appropriate standard to consider a technical violation. In *Samuelson* v. *Cook County Officers Electoral Bd.*, 969 N.E.2d 468 (2012), the court considered a challenge to a judicial candidate's petition consisting of "428 consecutively numbered pages of petition sheets containing a total of 4,242 signatures." *Id.* But included with his pages was a sheet of signatures for a candidate running in a different race. Because the law required signatures to be on consecutively numbered pages, an objector claimed that the inclusion of the other candidate's page invalidated the entire petition. The Court rejected this argument.

"Our courts have previously held that 'substantial compliance with the Election Code is acceptable when the invalidating charge concerns a technical violation…But substantial compliance is not

operative to release a candidate from compliance with the provisions intended by the legislature to guarantee a fair and honest election." *Id.* at 475. "[T]he inclusion of one nonconforming petition sheet out of many cannot, by any stretch of the imagination, constitute a complete disregard for the provisions of [the statute requiring pagination], justifying the application of such a rigorous standard." *Id.*

Finkenauer's petition cannot be saved by this logic. No one has attacked for including erroneously a stray sheet from another candidate. The objection is based on failing to do something that the code says is a requirement. In this context, strict compliance is necessary.

4. Finkenauer failed to qualify for the ballot

The panel should have not counted the signatures from Allamakee and Cedar counties that lacked proper dates. Striking either county from the 100-signature list would have left Finkenauer with too few counties to qualify for the ballot. Because the panel's decision was based on an erroneous interpretation of law that prejudiced the

substantial rights of the objectors, it was properly reversed. Iowa Code § 17A.19(10)(c).

D. The State Objections Panel is an "agency" for purposes of the Iowa Administrative Procedure Act

An "agency" for purposes of the Iowa Administrative Procedure Act "means each board, commission, department, officer or other administrative office or unit of the state." Iowa Code § 17A.2(1). The Court reviewed the panel's decision to not disqualify a candidate for state senate because of a criminal conviction as a judicial review under the IAPA. *Chiodo* v. *Section 43.24 Panel*, 846 N.W.2d 845, 848 (Iowa 2014) ("The Iowa Code authorizes judicial review of agency decisions that prejudice the 'substantial rights' of the petitioner. Iowa Code § 17A.19(1), (10)."). The Court in *Chiodo* noted that the panel argued unsuccessfully to the district court that it was not an agency for purposes of the IAPA but abandoned that argument on appeal. *Id.* at n. 1.

The panel made the same unsuccessful argument here. The district court proceeded as a Chapter 17A judicial review action

because the ultimate standard of review was the same: whether the panel's legal conclusions were correct. (Order 7). The district court recognized that if it construed the action as a petition for writ of certiorari it would determine whether the panel's denial of the objection was illegal, a standard that is not functionally different than review of an agency's determination of law where the agency has not been granted interpretative authority by the legislature.

E. The Court owes no deference to the panel's interpretations of law

Judicial review of agency action is controlled by the provisions of Iowa Code § 17A.19(10). Agency action may be reversed by the Court when it is based on an erroneous interpretation of law that had not been clearly vested by a provision of law in the agency and it violates the plaintiffs' substantial rights. Iowa Code § 17A.19(10)(c).

The Court owes no deference to the panel's legal interpretations because the legislature has not granted it such authority. No law speaks to this question. To say that an agency has been granted such interpretive authority "means that the reviewing court, using its own

independent judgment and without any required deference to the agency's view, must have a firm conviction from reviewing the precise language of the statute, and the practical considerations involved, that the legislature actually intended (or would have intended had it thought about the question) to delegate to the agency interpretive power with the binding force of law over the elaboration of the provision in question." *Renda* v. *Iowa Civil Rights Com'n*, 784 N.W.2d 8, 11 (Iowa 2010) (citing Arthur E. Bonfield, *Amendments to Iowa Administrative Procedure Act, Report on Selected Provisions to Iowa State Bar Association and Iowa State Government* 62 (1998)).

General rulemaking power cannot by itself give an agency the authority to interpret statutory language. *Id.* at 13. The Court has found that agencies like the Iowa Civil Rights Commission, Iowa Finance Authority, and Iowa Department of Revenue lack such authority. *Id.* And while the Court has found authority vested "when the statutory provision being interpreted is a substantive term within the special expertise of the agency." *Id.* at 14. But terms that have "an

independent legal definition that is not uniquely within the subject matter expertise of the agency" the Court generally concludes "the agency has not been vested with interpretive authority." *Id.*

Thus, the Court recently concluded that the Iowa Board of Medicine lacked the authority to interpret the phrase "privileged and confidential" in a statute regulating its investigative powers. *Calcaterra*, 965 N.W.2d at 903. The phrase "is not informed by the Board's special expertise." *Id*. The phrase "is not unique to the Board; it applies to many different licensing boards…Furthermore, courts frequently interpret the terms…in a variety of contexts." *Id.*

The panel cannot point to any provision of Iowa's elections laws that gives it the power to interpret for itself what the law means or to adopt a particular standard for judging the adequacy of nomination petitions. Thus, this case presents a pure question of law about which the Court owes the panel no deference.

F. Objectors have standing to pursue this action

The objectors challenged the Finkenauer nomination petition under Iowa Code § 43.24(1)(a), which gives the right to challenge to "any person who would have the right to vote for the candidate for the office in question." The panel conceded that objectors have standing to pursue relief in this Court. But the intervenor claimed below they do not and made two arguments in support. First, intervenor said this language limits the ability to file a challenge before the panel to a registered Democrat. Second, inventor said that objectors lack standing to bring a judicial review action. Both assertions lack merit.

The text of Iowa Code § 43.24(1)(a) does not lend itself to the cramped reading suggested by the intervenor. Notably absent from this language is any same-party restriction. The legislature knew how to limit petition challenge to be strictly intra-party affairs. But they did not so. In addition, the language used is focused on the general election, not the primary. It speaks of the ability of the objector to "vote for the candidate for the *office* in question" (emphasis added).

The winner of a primary election is entitled to a place on the general election ballot, not a certificate of election and the right to hold office. See Iowa Code § 43.67 (primary winner entitled to place on general election ballot), Iowa Code § 50.41 (certificate of election to winner of general election as determined by state board of canvassers). Because it is uncontroverted that objectors have the right to vote at the general election for the office of U.S. Senator, the claim should be rejected.

But even if the language could be limited to a right to the primary election only, the objectors have every right to vote in the Democratic primary. Iowa is a same-day registration state. Iowa Code § 43.41 (primary voter may declare party affiliation through the close of voter registration for the primary election) and Iowa Code § 48A.7A (permitting registration on the day of the election). Although they are registered Republicans now, they can be registered Democrats on or before the June 7, 2022, primary election. Thus, even if the grant of

standing to eligible voters is read in an atextual and cramped manner, the objectors still have standing.

Intervenor cited *Dickey* v. *Iowa Ethics & Campaign Disclosure Bd.*, 943 N.W.2d 34 (Iowa 2020) in support of his second standing argument. In *Dickey*, the plaintiff filed a complaint with the board over a campaign disclosure report of Governor Kim Reynolds. *Id.* at 36. The Governor received air travel from a supporter on a privately owned aircraft. *Id.* Her campaign disclosure report listed the value, according to the applicable administrative code provision, based on the value of commercial airfare for the same trip. *Id.* The plaintiff believed the rule treated the costs of such travel incorrectly and filed a complaint with the board, asking it to require the Governor's disclosure report to be restated. *Id.*

The campaign board rejected the complaint because it "found no indication that the Governor's campaign committee had violated any law." *Id.* at 37. The plaintiff then sought judicial review of this

determination. *Id.* The district court found the plaintiff lacked standing to pursue the matter further. *Id.* The Court agreed.

The Court recognized that the plaintiff's claimed injury was no more than a disagreement with how the board resolved his complaint. "The relief that Dickey seeks from the Board—a determination that the Governor's candidate committee underreported the fair market value of the trip—will not provide him any additional information." *Id.* at 39. "His petition and exhibits make clear that there is no gap in his knowledge regarding [the flight] that would be filled by granting his Board complaint." *Id.* at 41. At that point he had no more than the kind of general grievance about the law that is insufficient for standing. *Id.* at 38 (citing *Godfrey* v. *State*, 752 N.W.2d 413, 423-24 (Iowa 2008)). But objectors' case is different.

Dickey approached the Iowa Ethics and Campaign Disclosure Board as an enforcement agency. He wanted the IECDB to pursue an action as an exercise of *its* prosecutorial power. Its decision to decline his request did not cause Dickey a legally cognizable injury. Objectors,

in contrast, approached the State Objections Panel as a quasi-judicial body. They wanted the panel to adjudicate *their* claims—claims that the law gave them the right to raise. Because of this distinction, *Dickey* is no obstacle to the objectors' pursuit of judicial review.

CONCLUSION

The electoral process, much like other aspects of life, is full of rules. Rules mean nothing if they are ignored for unprincipled reasons. There are 27 candidates for statewide or federal office who did not have their petitions challenged. There are 250 candidates for the state legislature who similarly received no objection. Those campaigns did not rely on "substantial compliance." Rather, they achieved "actual compliance." Any claimed unfairness in sustaining these objections pales in comparison to the potential unfairness to the candidates and campaigns who expended the time and resources to follow the law. The panel's decision was properly reversed by the district court. It should be affirmed.

Request for Oral Submission

Appellant requests that this matter be submitted for oral argument.

Certificate of Cost

Appellant certifies that has not incurred costs for printing of this brief.

/s/ Alan R. Ostergren
Alan R. Ostergren

Certificate of Compliance

This brief complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(g)(1) because it contains **5,670** words, excluding parts of the brief exempted by that rule.

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