THE IOWA DISTRICT COURT FOR POLK COUNTY

SUZETTE RASMUSSEN, Plaintiff, vs. GOVERNOR KIM REYNOLDS and MICHAEL BOAL Defendants.	)))))))))	No. CVCV062318 PLAINTIFF'S MEMORANDUM OF AUTHORITIES IN OPPOSITION TO DEFENDANTS' SECOND MOTION TO DISMISS

COMES NOW Plaintiff Suzette Rasmussen, through counsel, and submits this memorandum in opposition to Defendants' second motion to dismiss.

INTRODUCTION

Since March of 2020, the state of Iowa, the United States of America, and the World has been in the midst of the greatest public health emergency of our lifetime. As of September 20, 2021, the Centers for Disease Control and Prevention estimates that more than 675,000 people have died of COVID-19 in the United States.[1] By comparison, more Americans have died from COVID-19 than have died *in all wars in the since 1900—combined*.[2] According to the National Institute of Health, testing for SARS-CoV-2, plays "a major role in stopping the pandemic."[3] In April 2020, the State of Iowa awarded a $26 million contract to Utah entities Nomi Health, Dom, Inc., and Co-Diagnostics to run its Test Iowa program. (Petition at ¶2). On March 12, 2021, Plaintiff Suzette Rasmussen submitted a public record request pursuant to Iowa Code chapter 22 to the office of Governor Kim Reynolds and Lt. Governor Adam Gregg requesting "all correspondence between Governor Reynolds, her staff and the Governor of the State of Utah, Governor

[1] https://covid.cdc.gov/covid-data-tracker/#cases_casesper100klast7days

[2] https://www.kqed.org/lowdown/22209/interactive-american-war-deaths-by-the-numbers

[3] https://www.nia.nih.gov/news/why-covid-19-testing-key-getting-back-normal

Gary R. Herbert and his staff regarding the Test Iowa Nomi Health COVID 19 Test Kits and Contracts." (Petition at ¶15). Rasmussen submitted the request to the Governor Reynold's counsel Michael Boal. Defendants did not provide Rasmussen documents in response to her request until September 2, 2021—eight days after they accepted service of this lawsuit.

The question presented in this litigation is whether Defendants substantially complied with the requirements of Iowa Code chapter 22 when they failed to produce public records that Rasmussen requested for 174 days. *Our Governor* asserts that any violation of Iowa Code chapter 22 becomes moot the moment a records custodian produces the requested records, even if the production does not occur for 174 days. *Our Governor* asserts that the statutory remedies provided in Iowa Code chapter 22 are not available to an aggrieved party so long as the records are produced prior to entry of judgment. Respectfully, *Our Governor* is wrong.

STANDARD OF REVIEW

In Iowa, motions to dismiss are highly disfavored. *Unertl v. Bezanson*, 414 N.W.2d 321, 324 (Iowa 1987) (recognizing that Iowa's liberal notice-pleading "philosophy has virtually emasculated the motion to dismiss for failure to state a claim"). "Nearly every case will survive a motion to dismiss under notice pleading." *Hawkeye Foodservice Distribution, Inc. v. Iowa Educators Corp.*, 812 N.W.2d 600, 608 (Iowa 2012). A court should grant a motion to dismiss only "if the petition shows no right of recovery under any state of facts." Id. at 604. In other words, there must be "no conceivable set of facts entitling the non-moving party to relief." *Rees v. City of Shenandoah*, 682 N.W.2d 77, 79 (Iowa 2004) (emphasis added). If the viability of a claim is at all debatable, the Court should not sustain a motion to dismiss. *Southard v. Visa U.S.A. Inc.*, 734 N.W.2d 192, 194 (Iowa 2007).

ARGUMENT

I. DEFENDANTS' MOTION TO DISMISS MUST BE DENIED BECAUSE RASMUSSEN'S LAWSUIT PRESENTS MULTIPLE LIVE, JUSTICIABLE ISSUES THAT REQUIRE RESOLUTION BY THE COURT

A. Iowa's Open Records Act

Iowa's Open Records Act, Iowa Code section 22.1 *et seq*., provides that "[e]very person shall have the right to examine and copy a public record and to publish or otherwise disseminate a public record or the information contained in a public record." Iowa Code § 22.2. The purpose of the statute is to open the doors of government to public scrutiny [and] to prevent government from secreting its decision-making activities from the public, on whose behalf it is its duty to act. *Diercks*, 806 N.W.2d at 652 (quoting *Rathman v. Bd. of Dirs.*, 580 N.W.2d 773, 777 (Iowa 1998)). "Accordingly, there is a presumption of openness and disclosure under this chapter." *Id.* (quoting *Gabrilson v. Flynn*, 554 N.W.2d 267, 271 (Iowa 1996)).

The Act initially places the burden of showing three things on the party seeking enforcement. That party must "demonstrate[] to the court that the defendant is subject to the requirements of this chapter, that the records in question are government records, and that the defendant refused to make those government records available for examination and copying by the plaintiff." Iowa Code § 22.10(2). Once the plaintiff makes these showings, the defendant has the burden to show compliance, and the Court must issue an injunction if it finds the defendant has not complied by a preponderance of the evidence. *Id.* § 22.10(3)(a); *see also City of Riverdale v. Diercks*, 806 N.W.2d 643, 653 (Iowa 2011) ("Once the citizen shows the city denied his or her request to access government records, the burden shifts to the city to demonstrate it complied with the chapter's requirements").

While the Act does not expressly place upon the records custodian a deadline by which to make the records available for inspection, section 22.4 states that "[t]he rights of persons under this chapter may be exercised at any time during the customary office hours of the lawful custodian of the records." *Id.* § 22.4. The Iowa Supreme Court has interpreted this provision mean that "our legislature contemplated immediate access to public records." *Horsfield Materials, Inc. v. City of Dyersville*, 834 N.W.2d 444, 461 (Iowa 2013). Similarly, a longstanding interpretation of chapter 22 states that open records requests should be provided as soon as feasible:

> Access to an open record shall be provided *promptly* upon request unless the size or nature of the request makes prompt access *infeasible*. If the size or nature of the request for access to an open record requires time for compliance, the custodian shall comply with the request *as soon as feasible*.

See Iowa Uniform Rules on Agency Procedure, Fair Information Practices, Agency No. X.3 (17A,22) (emphasis added)[4]; *see also Griffin Pipe Prods. Co. v. Bd of Review*, 789 N.W.2d 769, 775 (Iowa 2010) ("Longstanding administrative interpretations are entitled to some weight in statutory construction"). Thus, a records custodian does not comply with the requirements of the Act merely by producing requested records. To the contrary, it has a "legal obligation to produce the records promptly, subject to the size and nature of the request." *Horsfield Materials, Inc.*, 834 N.W.2d at 462.

The Act provides a slew of statutory remedies for violations. First, the Act provides that a court "[s]hall issue an injunction punishable by civil contempt ordering the offending lawful custodian and other appropriate person to comply . . . and, if appropriate, may order the lawful custodian and other appropriate persons to refrain for one year from any future violations." Iowa Code § 22.10(3)(a). Second, the Act directs the court to "assess the

[4] A*vailable* at https://www.legis.iowa.gov/DOCS/Rules/Current/UniformRules.pdf emphasis added).

persons who participated in the violation damages in the amount of not more than five hundred dollars and not less than one hundred dollars. However, if a person knowingly participated in such a violation, damages shall be in the amount of not more than two thousand five hundred dollars and not less than one thousand dollars." *Id.* § 22.10(3)(b). Third, the court "[s]hall order the payment of all costs and reasonable attorney fees, including appellate attorney fees, to any plaintiff successfully establishing a violation." *Id.* §22.10(3)(c). Lastly, the court "[s]hall issue an order removing a person from office if that person has engaged in a prior violation of this chapter for which damages were assessed against the person during the person's term." *Id.* § 22.10(3)(d).

B. Rasmussen's claim is not moot because she seeks relief in the form of statutory damages, injunctive relief, removal from office, and attorney fees

Defendants seek a dismissal solely on the basis that Rasmussen's claim is moot because the requested records have been produced. The mootness doctrine has its roots in Article III of the United States Constitution, limits the jurisdiction of federal courts to "Cases" and "Controversies." The Iowa Constitution, however, contains no similar analog. *Hawkeye Bancorp. V. Iowa Coll. Aid. Comm'n*, 360 N.W.2d 798, 801-802 (Iowa 1985). Despite the lack of any textual basis to support it, the Iowa Supreme Court has adopted a case-or-controversy requirement similar to the federal requirement. *Alons v. Iowa Dist. Ct.*, 698 N.W.2d 858, 869 (Iowa 2005).

"The doctrine of standing generally assesses whether [a personal interest in the dispute] exists at the outset, while the doctrine of mootness considers whether it exists throughout the proceedings." *Uzuegbunam v. Preczeewski*, ___ U.S. ___, 141 S. Ct. 792, 796 (2021). "In general, an action is moot if it no longer presents a justiciable controversy because the issues involved have become academic or nonexistent." *Buchhop v. Gen. Growth Properties & Gen. Growth Mgmt. Corp.*, 235 N.W.2d 301, 301 (Iowa 1975). The

"test of mootness is whether an opinion would be of force or effect in the underly controversy." *Grinnell College v. Osborn*, 751 N.W.2d 396, 399 (Iowa 2008). Thus, a case becomes moot "only when it is *impossible* for a court to grant any effectual relief whatever." *Chafin v. Chafin*, 568 U.S. 165, 172 (2013) (emphasis added). "As long as the parties have a concrete interest, however small, in the outcome of the litigation, the case is not moot." *Id.*

Rasmussen's statutory claim is not moot, despite Defendants' production of records, for several reasons. For starters, Rasmussen is entitled to statutory damages upon a finding that Defendants failed to substantially comply with the Act. When a "plaintiff has a cause of action for damages, a defendant's change in conduct will not moot the case." *Buckhannon Bd. & Care Home, Inc. v. W. Va. Dep't of Health & Human Res.*, 532 U.S. 598, 608-609 (2001). "For better or worse, nothing so shows a continuing state in a dispute's outcome as a demand for dollars and cents." *Mission Prod. Holdings, Inc. v. Tempnology, LLC*, ___ U.S. ___, 139 S. Ct. 1652, 1660 (2019). "If there is any chance of money changing hands, [the] suit remains live." *Id.* Indeed, a case is not moot, even if the only available remedy is $1. *Uzuegbunam v. Preczewski*, ___ U.S. ___, 141 S. Ct. 792 (2021) (holding that nominal damages are sufficient to defeat dismissal on mootness grounds where a plaintiff's claim is based on a completed violation of a legal right). That is because a "judgement for damages in any amount, whether compensatory or nominal, modifies the defendant's behavior for the plaintiff's benefit by forcing the defendant to pay an amount of money he otherwise would not pay." *Farrar v. Hobby*, 506 U.S. 103, 113 (1992).

Rasmussen's claim remains viable for another reason—she seeks prospective injunctive relief to which she is entitled under the Act. "Courts are skeptical when a defendant seeks dismissal of an injunctive claim as moot on the ground that it has changed its practice while reserving the right to go back to its old ways after the lawsuit is dismissed." *Ciarpaglini v. Norwood*, 817 F.3d 541, 544 (7th Cir. 2016). Accordingly, the

"heavy burden of persuading the court that the challenged conduct cannot reasonably be expected to start up again lies with the party asserting mootness." *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs., Inc.*, 528 U.S. 167, 189 (2000). Any subsequent self-serving statement Defendants may offer to suggest that they have reformed their freedom-of-information practices is simply not credible. Case in point – on January 7, 2021, in a recorded interview with the Iowa Capitol Press Association President Erin Murphy, Governor Reynolds acknowledged her past failure to respond timely to open records requests and made a commitment to responding in a timely manner going forward.[5] Governor Reynolds' pledge came a full two months prior to Rasmussen's open records requests, which were not fulfilled until 174 days later.

Further, the Act affords Rasmussen a statutory remedy of removal of the offender from office upon a showing the defendant has a prior violation for which damages were assessed. Just has a thief does not moot his case by returning the stolen property, a violator who refuses to produce public records in a timely fashion cannot moot a lawsuit by producing the records on the eve of trial. To allow that gamesmanship to survive judicial scrutiny on mootness grounds would render the statutory remedies in Chapter 22 wholly illusory.

Lastly, Rasmussen seeks statutory attorney fees. Even where production of records moots the question of whether a plaintiff is entitled to the records, it does not moot the Rasmussen's claim to statutory attorney fees. *Duncan Publishing, Inc. v. City of Chicago*, 304 Ill. App.3d 778, 780-82 (Ill. App. Ct. 1999); *see also Roxana Cmty. Unit. Sch. Dist. No. 1 v. EPA*, 998 N.E.2d 961, 969 (Ill. App. Ct. 2013) ("in accord with *Duncan*, plaintiffs' request

[5] Erin Murphy, Interview with Governor Kim Reynolds, (Iowa Capitol Press Ass'n January 7, 2021), *available at https://www.youtube.com/watch?v=-T39kSB1MeI* (last accessed 09/23/21).

for attorney fees and a civil penalty survive"). For these reasons, Defendants' motion to dismiss must be denied in its entirety.

C. The Iowa Supreme Court's decision in *Horsfield Materials, Inc.* establishes the Rasmussen's claims are not moot

Defendants' claim that a belated production of records moots a statutory cause of action for violating Chapter 22 cannot be squared with the Iowa Supreme Court's decision in *Horsfield Materials, Inc.* In that case, the plaintiff submitted an open records request to the City of Dyersville on January 11, 2010. *Horsfield Materials, Inc.*, 834 N.W.2d at 450. The City did not produced documents in response to the request until April 6, 2010. *Id.* at 451. The plaintiff filed a claim alleging that the City's delay in producing the records violated the Iowa Open Records Act. *Id.* at 459. The Iowa Supreme Court held that the City's delayed production did not "substantially compl[y] with its obligation to produce public records promptly." *Id.* at 462.

The *Horsfield Materials, Inc.* decision is controlling. Just as in this case, the claim in *Horsfield Materials, Inc.* involved the delayed production of records materials subject to public disclosure under the Act. Notwithstanding the fact that the City produced the records during the pendency of the lawsuit, the Iowa Supreme Court reached the merits of the alleged violation of the Act. *Id.* at 463. Even where no party raises the mootness issue, the Iowa Supreme Court "has responsibility *sua sponte* to police its own jurisdiction." *Bribriesco-Ledger v. Klipsch*, 957 N.W.2d 646, 649 (Iowa 2021) (considering sua sponte whether the claim was moot on appeal). Surely, if production of the records mooted the lawsuit, the Iowa Supreme Court would have said so. From *Horsfield Materials, Inc.*, it follows *a fortiori* that Rasmussen's claim is not moot simply because Defendants produced the documents when the production was untimely.

D. Defendants' reliance on the decision in *Neer v. State* is misplaced

In support of their motion to dismiss, Defendants cite to the decision in *Neer v. State*, 2011 WL 662725 (Iowa Ct. App. Feb. 23, 2011), for the proposition that supplying records renders a public records lawsuit moot. Their reliance on *Neer* is misplaced for three reasons. First, *Neer* is an unpublished opinion, and therefore, it is not controlling authority. Second, the court in *Neer* invoked the public importance exception to the mootness doctrine. The court expressly declined to entertain whether the issue of whether the remedies of prospective injunctive relief, statutory damages, and attorney fees "remained viable after the State's voluntary production of the requested information." *Id.* at *3. Accordingly, the observation that the claims was moot is classic *orbiter dictum*. Third, *Neer* is not doctrinally sound. In summarily passing over the mootness issue, the court cited to decision in *Papa v. United States*, 281 F.3d 1004, 1013 (9th Cir. 2002), as holding that a belated production of records moots a FOIA claim. *Id.* In this way, the court of appeals misreads the breath of the *Papa* holding. The original federal from which *Papa* follows is limited to cases in which the only relief sought by the complaining party is production of records.[6] Here, Rasmussen seeks a declaration that Defendants violated the Act along with an award of statutory injunctive relief and damages. Finally, Iowa Supreme Court's more recent decision in *Horsfield Materials, Inc.*, in which the court reached the merits of the alleged statutory violation notwithstanding the belated disclosure by the

[6] The court in *Papa* cites to the decision in *Perry v. Block*, 684 F.2d 121, 125 (D.C. Cir. 1982). *See Papa*, 281 F.3d at 1013 n.42. *Perry* cites to the decision in *Crooker v. United States State Dept.*, 628 F.2d 9, 10 (D.C. Cir. 1980), which, in turn, cites to *Ackerly v. Ley*, 420 F.2d 1336, 1340 (D.C. Cir. 1969). The mootness finding in *Ackerly* turned upon the fact that the only remedy the plaintiff sought was compelled production. *See Ackerly*, 420 F.3d at 1340 ("In any event, we think the lawsuit lost its substance at to this item, *since the only specific relief appellant seeks is compelled disclosure and that has been rendered moot by the disclosure in this instance which has now actually been made*") (emphasis added).

records custodian undermines *Neer's* mootness analysis. In all these respects, the *Neer* decision offers no guidance.

II. THE COURT SHOULD EXCUSE ANY MOOTNESS PROBLEM ON THE BASIS THAT RASMUSSEN'S CLAIM PRESENTS AN ISSUE OF GREAT PUBLIC IMPORTANCE THAT IS CAPABLE OF REPETITION BUT WILL AVOID REVIEW

Even if the Court determines that Rasmussen's claim is moot, it should still consider the issues presented under the public interest exception. *Dubuque v. Public Employment Relations Bd.*, 339 N.W.2d 827, 831 (Iowa 1983). An important factor to consider is whether the challenged action "is such that often the matter will be moot before it can reach an appellate court." *In re M.T.*, 625 N.W.2d 702, 705 (Iowa 2001). There can be no meaningful dispute that timely production of records of the Governor's office is a matter of great public importance. And, if Defendants' interpretation prevails, an aggrieved party will never be able to obtain the statutory remedies afforded under the Act. This Governor, or any future one, could simply ignore all open records requests and then moot any subsequent complaint simply by producing the records prior to entry of judgment. Looking beyond this case, violations of the Act will go unremedied and government officials will have a blueprint for avoiding their statutory obligations. Accordingly, the Court should not dismiss Rasmussen's claim on mootness grounds.

III. RASMUSSEN'S LAWSUIT DOES NOT PRESENT ISSUES PRECLUDED BY THE POLITICAL QUESTION DOCTRINE

Implicitly recognizing that Rasmussen's claims are not moot, Defendants seek refuse in the political question doctrine, which applies when one or more the following considerations is present:

> (1) a textually demonstrable constitutional commitment of the issue to a coordinate political department; (2) a lack of judicially discoverable and manageable standards for resolving the issue; (3) the impossibility of deciding without an initial policy determination of a kind clearly for nonjudicial discretion; (4) the impossibility of a court's undertaking independent

> resolution without expressing a lack of the respect due coordinate branches of government; (5) an unusual need for unquestioning adherence to a political decision already made; or (6) the potentiality of embarrassment from multifarious pronouncements by various departments on one question.

Dickey v. Besler, 954 N.W.2d 425, 435 (Iowa 2021). Application of the political question in this case fails on all factors. First, there is no "textually demonstrable constitutional commitment" to the Governor when to decide to release records belonging to the state of Iowa. The constitutional provisions vesting supreme executive power in the Governor as well as the Take Care Clause are several standard deviations away from the constitutional provisions in *Dickey* and *Turner v. Scott*, 269 N.W.2d 828 (Iowa 1978). *Dickey*, 954 N.W.2d at 428 (Article V, section 15 of the Iowa Constitution, which expressly vests appointment authority in the Governor and Chief Justice); *Turner*, 269 N.W.2d at 829-31 (Article III, section 7 (expressly vesting in each house the authority to judge the qualification, election, and return of its own members"). Second, this Court does not lack "judicially discoverable and manageable standards" for resolving the case. Indeed, the issue presented is identical to that which was previously decided by the Iowa Supreme Court in *Horsfield Materials, Inc.* Third, there is no need for an initial policy determination by another branch of government. *See Freeman v. Grain Processing Corp.*, 848 N.W.2d 58, 94 (Iowa 2014). Iowa Courts routinely make value judgments on the timeliness of the conduct of parties in fashioning equitable relief. To the extent that the Governor asserts that she was not able to timely respond to the open records request because "of limited time and resources of the Governor's staff," that is not an issue that can be decided on the pleadings. Fourth, litigation would not require the Court to express a lack of respect for the executive branch of Iowa government. Indeed, Iowa courts have long decided challenges brought against executive branch agencies under Iowa Code chapter 22. *See Iowa Film Prod. Servs. v. Iowa Dept. of Econ. Dev.*, 818 N.W.2d 207 (Iowa 2012); *Craigmont Care Ctr. v. Dept. of Social*

Servs., 325 N.W.2d 918 (Iowa 1982). Fifth, there is no unusual need for unquestioning adherence to a political decision already made. To the contrary, the Governor previously declared her intent to be open, transparent, and respond in a timely manner. Murphy, Interview with Governor Kim Reynolds, *available at https://www.youtube.com/watch?v=-T39kSB1MeI* (last accessed 10/21/21). Finally, the question presented is not susceptible to multifarious pronouncements by various branches of the government anymore than any other lawsuit involving the executive branch as a defendant.

IV. EXECUTIVE PRIVILEGE DOES NOT SHIELD THE GOVERNOR OR HER EXECUTIVE BRANCH EMPLOYEES FROM STATUTORY LIABLITY UNDER IOWA CODE CHAPTER 22

Defendants next assert that dismissal is required because they have executive privilege. That conclusion does not remotely follow. "Executive privilege" as contemplated in *United States v. Nixon*, 418 U.S. 683 (1974), refers to the ability of a party to obtain information in the course of discovery concerning communications between the Governor and her staff. It is not a grant of immunity from suit. Thus, it may very well limit Plaintiff's ability to obtain otherwise discoverable information, but it does warrant dismissal at the pleadings stage. Moreover, the Iowa Supreme Court has recognized that constitutional privileges, such as executive privilege, may be overridden by a compelling need for evidence. *Lamberton v. Brown*, 326 N.W.2d 305, 307 (Iowa 1982) (citing *Nixon*, 418 U.S. at 713). Accordingly, Defendants anticipatory invocation of executive privilege is speculative at best.

V. DEFENDANTS ARE NOT ENTITLED A JUDGMENT ON THE PLEADINGS

Defendants ask the Court to decide the merits of the case on the pleadings. That is not how Rule 1.421 works. A court should grant a motion to dismiss only "if the petition shows no right of recovery under any state of facts." *Hawkeye Foodservice Distribution, Inc.*, at 604. In other words, there must be "no conceivable set of facts entitling the non-moving

party to relief." *Rees*, 682 N.W.2d at 79. Defendants argument in this regard present the facts as they'd like the ultimate factfinder to except and ignores Rasmussen's well pleaded facts. "Such a mode of presentation is unhelpful to the court." *Vodak v. City of Chicago*, 639 F.3d 738, 740 (7th Cir. 2011). It is also fatal to its motion to dismiss. Because the facts alleged on Rasmussen's complaint are sufficient to state grounds upon which relief may be granted, Defendants' motion to dismiss should be denied on this ground as well.

VI. RASMUSSEN HAS STANDING TO SUE UNDER IOWA CODE CHAPTER 22

As their final fallback position, Defendants assert that Rasmussen does not have standing to obtain injunctive relief, statutory damages, or removal of the Governor from office. The gist of the standing doctrine is that a party must have a "sufficient stake in an otherwise justiciable controversy to obtain judicial resolution of that controversy." *Alons v. Iowa Dist. Court for Woodbury County*, 696 N.W.2d 858, 863 (Iowa 2005). As far as Iowa law is concerned, this means "that a complaining party must (1) have a specific personal or legal interest in the litigation and (2) be injuriously affected." *Id.* at 864. Having a legal interest in the litigation and being injuriously affected are separate requirements for standing. *Id.* As the Iowa Supreme Court has explained, standing is a doctrine courts employ to:

> refuse to determine the merits of a legal controversy irrespective of its correctness, where the party advancing it is not properly situated to prosecute the action. When standing is put in issue, the question is whether the person whose standing is challenged is a proper party to request an adjudication of the issue and not whether the controversy is otherwise justiciable, or whether, on the merits, the plaintiff has a legally protected interest that the defendant's action has invaded.

Id. In short, the focus is on the party, not on the claim. *Id.*

The standing analysis explained by the *FEC v. Akins*, 524 U.S. 11 (1998), controls the question presented in this case. In *Akins*, plaintiffs were a group of voters who filed a complaint with the Federal Election Commission claiming that the American Israel Public

Affairs Committee ("AIPAC") violated the Federal Election Campaign Act's ("FECA") reporting requirements. *Id.* at 15. Specifically, plaintiffs alleged that AIPAC was a "political committee" required to file periodic reports disclosing contributions and expenditures as well as the identities of its donors. *Id.* at 14-15. The FEC dismissed plaintiffs' complaint on the basis that AIPAC was not a political committee because it did not have as a "major purpose" the nomination or election of candidates. *Id.* at 17-18.

Plaintiffs filed a petition in federal district court seeking review of the FEC's determination dismissing their complaint. *Id.* at 18. The district court and court of appeals affirmed. *Id.* The United States Supreme Court granted certiorari to decide whether plaintiffs "had standing to challenge the [FEC's] determination not to bring an enforcement action." *Id.* In addressing the standing issue, the Court found that plaintiff had suffered a "genuine injury in fact" from their "inability to obtain information" concerning AIPAC's donors, campaign-related contributions, and expenditures, which they contended the FECA required AIPAC to make public. *Id.* at 21. The Court explained that "the information would help them (and other to whom they communicate) to evaluate candidates for public office . . . and to evaluate the role that AIPAC's financial assistance might play in a specific election." *Id.* In this way, plaintiffs' injury was "concrete and particular." *Id.* As in *Akins*, Rasmussen suffered an injury sufficient to grant standing from the inability to obtain "information which must be publicly disclosed pursuant to a statute." *Id.*; *see also Public Citizen v. Dept. of Justice*, 491 U.S. 440, 449 (failure to obtain information subject to disclosure under Federal Advisory Committee Act "constitutes a sufficiently distinct injury to provide standing to sue"); *Havens v. Realty Corp. v. Coleman*, 455 U.S. 363, 373-74 (1982) (deprivation of information about hosing availability constitutes "specific injury" permitting standing).

Defendants remaining arguments about the likelihood of needing an injunction, statutory damages, and removal of the Governor are just noise. The statutory provision authorizing a one-year injunction is discretionary. Iowa Code § 22.10(3)(a). If violations are unlikely reoccur, as Defendants suggest, the Court need not enter the injunction. But, the merits of injunctive relief under the particular circumstances is not a relevant consideration to the issue of standing. Similarly, Defendants misstate the applicability of the statutory liquidated damages provision, which requires payment of damages to the state of Iowa "if the *body in question* is a state government body." *Id.* § 22.10(3)(b) (emphasis added). Under the plain text of the section 22.10(3)(b), statutory damages assessed against Governor Reynolds and Boal would not be paid to the state of Iowa. Again, Defendants' objection involves availability of remedies; not standing. The same is true for the remedy of removal from office—the resolution of which does not determine whether Rasmussen has been sufficiently injured to have standing. Accordingly, Defendants' motion to dismiss for lack of standing must be denied.

DATED this 21st day of October 2021.

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