

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

KIM SCHMETT and LEANNE PELLETT,
Plaintiffs,

v.

STATE OBJECTIONS PANEL,
Respondent.

Case No. 05771 CVCV063390 (POLK)

**MEMORANDUM OF AUTHORITIES
IN SUPPORT OF AFFIRMING THE
DECISION OF THE STATE
OBJECTIONS PANEL**

COMES NOW Abby for Iowa, through counsel, and in support of affirming the State of Iowa Objections Panel’s decision denying Plaintiffs’ Objections to Movant’s candidate’s Nomination Petition, which is subject to judicial review in this action, offers the following memorandum of authorities.

STATEMENT OF ISSUES PRESENTED FOR REVIEW

Voting is a fundamental right in Iowa. *Devine v. Wonderlich*, 268 N.W.2d 620, 623 (Iowa 1978). A necessary component of the right to vote is the right to vote for one’s preferred candidate. It is for this reason that “statutes governing nomination procedures should be liberally construed to the benefit of the electors in order to provide every lawful opportunity for the electors to express their preference at the ballot box.” *In the Matter of Obj. to the Nominating Pet. of Joseph Seng*, Findings of Fact, Conclusions of Law, Decision and Order at 5 (2012) (citing *In the Matter of Obj. to the Nominating Pet. of Paul W. Johnson*, Decision and Order at 9 (2004)).¹ Although states have an interest in regulating access to the ballot, that interest is related to “protecting the integrity of the political process from frivolous or fraudulent candidacies” by showing that candidates have

¹ See also *In the Matter of the Nominating Pet. of Ralph Nader and Peter Camejo*, Findings of Fact, Conclusions of Law, Decision and Order p. 12 (2004) (“It is our view that statutes governing nomination papers should be liberally construed.”).

some “modicum of support” before their names appear on the ballot. *Lunde v. Schultz*, 221 F. Supp. 3d 1095, 1105 (S.D. Iowa 2014) (internal citations omitted).

Accordingly, the Iowa laws regulating ballot access do not exist to allow Plaintiffs to cherry-pick unfounded or technical discrepancies from Ms. Finkenauer’s Nomination Petition, which is signed by over 4,900 Iowans. Plaintiffs appeal is without merit. They lack standing, their claims are not ripe, and their objections have no basis in fact or law. Granting Plaintiffs the relief they seek would deny those Iowans of their right to vote for a candidate of their choice.

The questions presented for review in this appeal are:

1. Do Plaintiffs, as Republicans, have standing to file objections to Ms. Finkenauer’s Democratic Nomination Petition?
2. Is Plaintiffs’ challenge ripe when they have not registered to participate in the June Democratic Primary Election?
3. Do missing or mistaken dates on nomination petitions provide a basis under Iowa law for not counting signatures?

STATEMENT OF THE CASE

Abby Finkenauer is a candidate running for the Democratic nomination for United States Senate in the Iowa Democratic Primary Election on June 7, 2022. On March 25, 2022, Plaintiffs filed Objections to Ms. Finkenauer’s Nomination Petition with the State of Iowa Objections Panel (the “Panel”), asserting, among other objections, that petition signatures accompanied by missing or mistaken dates should not be counted. On March 28, Ms. Finkenauer, through counsel, filed a Response to Plaintiffs’ Objections, in which she contended that the Panel should dismiss the Objections because they were unsupported by the facts and unfounded in the law. On March 29, the Panel held a hearing with oral argument and ultimately dismissed Plaintiffs’ Objections.

STANDARD OF REVIEW

The standard of review under the Iowa Administrative Procedure Act is for correction of legal errors, with no deference to the interpretation of statutes that “ha[ve] not clearly been vested by a provision of law in the discretion of the agency.” *See* Iowa Code § 17A.19(10)(c). The Panel’s application of the law to the facts stands unless it was “irrational, illogical, or wholly unjustifiable.” *See id.* § 17A.19(10)(1). The legislature has not clearly vested the Panel with interpretive authority over Iowa Code Chapter 43, and in particular, sections 43.14 and 43.24. *See Banilla Games, Inc. v. Iowa Dep’t of Inspections and Appeals*, 919 N.W.2d 6, 13-14 (Iowa 2018). Nor are the terms contained therein “specific to the expertise of the [Panel].” *Id.* at 13. Accordingly, the Panel’s statutory interpretation is to be afforded no deference, and review is for correction of errors at law. *Id.* at 14. The legislature did, however, vest the Panel with authority to “consider” objections filed under section 43.24. Iowa Code § 43.24(3)(a). Consequently, the Panel’s application of law to the facts is reviewed to determine if it is “irrational, illogical, or wholly unjustifiable.” *Banilla Games, Inc.*, 919 N.W.2d at 18. Under either standard of review, Objectors are entitled to relief only if the Panel’s decision is “unreasonable, arbitrary, capricious, or an abuse of discretion.” *Id.* at 18-19.

ARGUMENT

There are three basic grounds on which this Court can deny Plaintiffs’ Petition and affirm the decision of the Panel. *First*, Plaintiffs, as Republicans, lack standing to file objections to Ms. Finkenauer’s Nominating Petition because they cannot vote in the June Democratic Primary. *Second*, even if Plaintiffs could achieve standing based on the possibility of changing their party registrations, their claim is not ripe unless and until they do so. *Finally*, there is no legal,

practical, or policy justification for not counting the signatures of eligible electors on the sole basis that they have missing or mistaken dates.

I. Plaintiffs lack standing to file objections to Ms. Finkenauer’s Nomination Petition.

Objections to Ms. Finkenauer’s Nomination Petition “may be filed . . . by any person who would have the right to vote for the candidate for the office in question.” Iowa Code § 43.24(1)(a). Accordingly, during the March 29 hearing before the Panel, counsel for Ms. Finkenauer asserted that Plaintiffs, as Republicans,² lack standing to file objections to Ms. Finkenauer’s Nomination Petition, because they are not permitted to cast ballots in the Democratic Primary. Iowa Code § 43.38 (“The elector shall be allowed to vote for candidates for nomination on the ballot of the party with which the elector is registered as affiliated, and shall receive no other ballot.”).

The Iowa Supreme Court has explained that, under Iowa Code § 17A.19, “a person or party who is aggrieved or adversely affected by agency action may seek judicial review of such agency action,” but, “to have standing to challenge an administrative action in court under the IAPA, ‘the complaining party must (1) have a specific, personal, and legal interest in the litigation; and (2) the specific interest must be adversely affected by the agency action in question.’” *See Dickey v. Iowa Ethics & Campaign Disclosure Bd.*, 943 N.W.2d 34, 37–38 (Iowa 2020) (citing *e.g.*, *Medco Behav. Care Corp. of Iowa v. Iowa Dep’t of Human Servs.*, 553 N.W.2d 556, 562 (Iowa 1996)) (internal quotes and citations omitted). The Panel disagreed with counsel’s legally supported assertion, however, holding that Plaintiffs *could* have standing in the future based on Iowa’s same-day voter registration policy. Counsel then raised that Plaintiffs’ objections are therefore not ripe

² *See Republicans sue to kick Democrat Finkenauer off ballot*, The Associated Press (March 31, 2022), available at <https://apnews.com/article/2022-midterm-elections-des-moines-dubuque-tom-miller-abby-finkenauer-9eb897d84cef021a4640a73f5958d32d>.

unless and until they register to vote in the June 7, 2022 Democratic Primary, but the Panel similarly dismissed this claim.

In order to have standing, 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 Cnty.*, 698 N.W.2d 858, 863 (Iowa 2005). Under Iowa law, 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, and the focus is on the party, not the claim. *See id.* Under this standard, Plaintiffs, as Republicans, cannot have a “specific personal” interest in, or be “injuriously affected” by, whether Ms. Finkenauer appears on the ballot, because they are not permitted to cast ballots in the Democratic Primary.

Even if this Court agrees with the Panel that Plaintiffs satisfy standing based on the mere *possibility* that they could change their registrations to be eligible to vote in the Democratic Primary, their claims cannot be ripe unless and until they do so. As the Iowa Supreme Court has explained, “[i]f a claim is not ripe for adjudication, a court is without jurisdiction to hear the claim and must dismiss it.” *Iowa Coal Mining Co. v. Monroe Cnty.*, 555 N.W.2d 418, 432 (Iowa 1996) (explaining that the rationale behind the ripeness doctrine is to prevent courts from entangling themselves in “abstract disagreements” and protect “agencies from judicial interference until an administrative decision has been formalized and its effects felt in a concrete way by the challenging parties”).

This is a case in point. Plaintiffs are not Democrats and have made no assertion that they intend to change parties to participate in the Democratic Primary. The Iowa General Assembly could have provided standing in Section 43.24 to any “eligible elector” to lodge an objection.

Similarly, the Assembly could have granted a right to judicial review to any resident of the State. It rejected both options and chose instead to limit objections to individuals who “would have the right to vote for the candidate for the office in question” and subsequent judicial review to “aggrieved” parties. Because the Plaintiffs fall outside of either category, their petition for judicial review should be summarily denied.

II. There is no basis to not count ballot petition signatures with missing or mistaken dates.

Plaintiffs’ Objection challenges several lines of Ms. Finkenauer’s Nomination Petition where eligible electors signed their name and provided their complete address, but either failed to provide the date they signed the petition or provided a mistaken date. Notably, these challenges implicate just *four* signatures³ out of approximately 4,900 collected on Ms. Finkenauer’s behalf. There is no statutory basis or practical reason not to count such signatures, and it would frustrate state policy not to count signatures from eligible electors.

A. There is no statutory basis under Iowa law to not count signatures with missing or mistaken dates.

Iowa Code § 43.15(3) requires eligible electors who sign nominating petitions to include the “date of signing.” However, the Code does not state that a missing or mistaken date may provide the basis for *not* counting a petition signature. Moreover, under Iowa law, candidates can begin collecting petition signatures from eligible electors at any time, so the date a voter signs a nomination petition does not affect the validity of their signature.

³ (1) Allamakee Page 10, Line 2; (2) Cedar Page 6, Line 1 (3); Cedar Page 10, Line 12; and (4) Clinton Page 10, Line 6.

Two subsections of Iowa Code § 43.14 provide the reasons why a signature line shall not be counted. First, Iowa Code § 43.14(2)(c) provides:

A signature line shall not be counted if the line lacks the signature of the eligible elector and the signer's residential address, with street and number, if any, and city. A signature line shall not be counted if an eligible elector supplies only a partial address or a post office box address, or if the signer's address is obviously outside the boundaries of the district.

Next, Iowa Code § 43.14(d) provides:

A signature line shall not be counted if any of the required information is crossed out or redacted at the time the nomination papers are filed with the state commissioner or commissioner.

Taken together, these sections provide just four enumerated grounds for not counting a signature line: (1) a signature is lacking; (2) the signer's address is missing or incomplete; (3) the signer is outside the boundaries; or (4) information is crossed out or redacted. The absence of any mention of the date requirement in Section 43.14 makes clear that the legislature did not intend for missing or mistaken dates to be the basis for not counting a signature line. *See Peak v. Adams*, 799 N.W.2d 535, 548 (Iowa 2011) (finding persuasive the *expressio unius est exclusio alterius* rule of statutory construction).

B. There is no practical reason to not count signatures when their accompanying dates are readily discernable.

Even if there was a legal basis not to count signatures of eligible electors that have missing or mistaken dates, there is no practical reason to do so here, because the dates of the lines at issue are readily discernable by looking at the surrounding signature lines on the same pages:

Allamakee Page 10, Lines 1-3

	house number and street	city	
1.	1078 W Main St	Hankston	2-10-22
2.	240 16th Ave	Waukon	5-2-22
3.	202 E Main St	Shanksville	5-11-22

One can reasonably discern that Line 2 (where the voter mistakenly provided their Zip code rather than the date of signing) was signed on either February 10, 2022 or February 11, 2022.

Cedar Page 6, Lines 1-5

	Sign your name	Address where you live in Iowa:		Today's Date
		House number and street	City	
1.	<i>Louis [unclear]</i>	126 W Downey	WB	6-6-22
2.	<i>Judith [unclear]</i>	1996 Delta	West Branch	2-6-2022
3.	<i>[unclear]</i>	135 Scott Dr	W Branch	2-6-22
4.	<i>Patricia L. Humbold</i>	215 N. Downey St	W. Branch	2-6-22
5.	<i>Ronnie E. Wood</i>	145 SCOTT DR.	WEST BRANCH	2-6-22

One can reasonably discern that Line 1 (where the voter mistakenly wrote the future date of June 6, 2022) was signed on February 6, 2022, which is the date that all other signatures on that page are dated.

Cedar Page 10, Lines 10-14

10.	<i>Wishy [unclear]</i>	1897 Fox Ave	west Branch	2/7/22
11.	<i>Dani [unclear]</i>	1115 CEDAR ST	TINTON	2-7-22
12.	<i>Jan [unclear]</i>	1310 N. Ave	Tipton	
13.	<i>[unclear]</i>	1720 North Ave	Tipton	2/7/22
14.	<i>Peter [unclear]</i>	1270 Vermont Ave	Barnett	2722

One can reasonably discern that Line 12 was signed on February 7, 2022, which is the date that the signatures before and after that line are dated.

Clinton Page 10, Lines 5-8

4.	<i>Trisha Watson</i>	1406 12th Ave	Dewitt	2-26-22
5.	<i>[unclear]</i>	211- 11th Ave	Dewitt	2-26-22
6.	<i>[unclear]</i>	503 4th	De Witt	
7.	<i>[unclear]</i>	427 Jackson Blvd.	Cass Lake	2-26-22
8.	<i>[unclear]</i>	427 Jackson Blvd	Cass Lake	2-26-22

One can reasonably discern that Line 6 was signed on February 26, 2022, which is the date that the signatures before and after that line are dated.

In summary, for each of the four challenged signatures, the dates of the lines at issue are readily discernable by looking at the surrounding signature lines on the same pages.

C. It would frustrate state policy to not count signatures signed by eligible electors.

As explained above, it is the policy of the Panel that “statutes governing nomination procedures should be liberally construed to the benefit of the electors in order to provide every lawful opportunity for the electors to express their preference at the ballot box.” *In the Matter of Obj. to the Nominating Pet. of Joseph Seng*, Findings of Fact, Conclusions of Law, Decision and Order at 5 (2012) (citing *In the Matter of Obj. to the Nominating Pet. of Paul W. Johnson*, Findings of Fact, Conclusions of Law, Decision and Order at 9 (2004)). This policy will be directly contradicted if Ms. Finkenauer’s signatures are not counted due to missing or mistaken dates when basic public records searches verify that each of the four challenged lines of her Nominating Petition are valid because they (1) contain valid addresses and/or (2) were signed by eligible electors:

Allamakee Page 10, Lines 2

Zillow Edit Save Share More

2 bd | 2.5 ba | 1,791 sqft
 248 16th Ave NW, Waukon, IA 52172

● **Off market** Zestimate®: **\$252,200** | Rent Zestimate®: **\$1,269**

Est. refi payment: \$1,388/mo **Refinance your loan**

Home value Owner tools **Home details** Neighborhood details

Overview

Note: This property is not currently for sale or for rent on Zillow. The description and property data below may've been provided by a third party, the homeowner or public records.

This 1791 square foot single family home has 2 bedrooms and 2.5 bathrooms. This home is located at 248 16th Ave NW, Waukon, IA 52172.

Facts and features Edit

Type: Single Family **Cooling:** Central
Year built: 1977 **Parking:** Garage - Attached

Publicly available records indicate that 248 16th Ave. NW, Waukon, IA 52172, the address provided, is a valid address.⁴

Cedar Page 6, Lines 1

Date	Received By	Contributed By	Amount	Check Number	Type
6/9/2012	#9030 Cedar County Democratic Central Committee 1444 Charles Ave West Branch, IA 52358	Mary & Louis Picek 126 N. Downey West Branch, IA 52358	\$20.00	5447	CON

Iowa campaign finance records indicate an individual named Louis Picek resides at the address provided, and that name matches the name signed.⁵

⁴ https://www.zillow.com/homedetails/248-16th-Ave-NW-Waukon-IA-52172/81734265_zpid/.

⁵ <https://webapp.iecdb.iowa.gov/publicReports/searchable-database>.

Cedar Page 10, Line 12

Joe Ahrendsen in Tipton, IA (Iowa)

Age 71

[VIEW FULL BACKGROUND REPORT >>](#)



[Get notified when Joe Ann Ahrendsen's info changes.](#)



Current Address

[1310 North Ave](#)
[Tipton IA 52772](#)

Cedar County
Since April 1993

Publicly available records indicate an individual named Joe Ahrendsen resides at that address, and that name matches the name signed.⁶

Clinton Page 10, Line 6

Jedd Ganzer
Goes By **Jed Ganzer**
De Witt, IA

Age: 56

Full Name: Jed O Ganzer

Current Home Address:

[503 4th St](#)
[De Witt IA 52742](#)

⁶ https://www.fastpeoplesearch.com/joe-ahrendsen_id_G-4464235284875216684.

Publicly available records indicate an individual named Jedd Ganzer resides at that address, and that name matches the name signed.⁷

CONCLUSION

Plaintiffs lack standing, their claims are not ripe, and their objections have no basis in fact or law. The Court should affirm the decision of the State of Iowa Objections Panel dismissing Plaintiffs' Objections to Ms. Finkenauer's Nomination Petition.

Respectfully submitted,



Gary Dickey
**DICKEY, CAMPBELL, & SAHAG LAW FIRM,
PLC**
301 East Walnut Street, Suite 1
Des Moines, IA 50309
(515) 288-5008
gary@iowajustice.com

Kate Sawyer Keane*
Sarah N. Mahmood*
Alexander F. Atkins*
ELIAS LAW GROUP LLP
10 G Street NE, Suite 600
Washington, DC 20002
Phone: (202) 968-4540
Facsimile: (202) 968-4498
kskeane@elias.law
smahmood@elias.law
aatkins@elias.law

Attorneys for Movant
**Application for Admission Pro Hac Vice Pending*

⁷ https://www.fastpeoplesearch.com/name/jedd-ganzer_iowa.