

SUPREME COURT No. 19-0094
POLK COUNTY No. CVCV057127

**IN THE
SUPREME COURT OF IOWA**

GARY DICKEY, JR.
Petitioner-Appellant,

v.

IOWA ETHICS AND CAMPAIGN DISCLOSURE BOARD
Respondent-Appellee.

*ON APPEAL FROM THE IOWA DISTRICT COURT
IN AND FOR POLK COUNTY
HONORABLE JEANIE VAUDT, DISTRICT COURT JUDGE*

BRIEF FOR APPELLANT

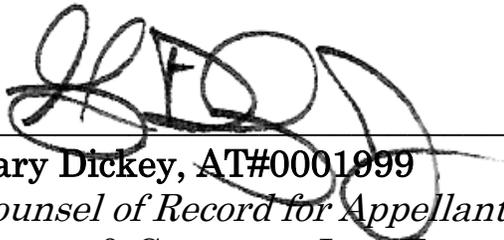
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TABLE OF CONTENTS

	<u>Page</u>
TABLE OF AUTHORITIES	5
STATEMENT OF ISSUES PRESENTED FOR REVIEW	6
ROUTING STATEMENT	7
STATEMENT OF THE CASE.....	8
STATEMENT OF THE FACTS.....	9
ARGUMENT	12
THE DISTRICT COURT’S MOTION TO DISMISS MUST BE REVERSED BECAUSE DICKEY SUFFERED INFORMATIONAL INJURY BY THE BOARD’S REFUSAL TO REQUIRE THE KIM REYNOLDS FOR IOWA CANDIDATE COMMITTEE TO CORRECT A PLAINLY INCORRECT CAMPAIGN DISLCOSURE REPORT	12
A. Applicable legal principles	13
B. Dickey has standing because he suffered a concrete and particularized informational injury as a result of the plainly incorrect campaign disclosure report	15
C. Dickey satisfies the prudential requirements to challenge the Board’s decision because his injury is the kind that the Iowa Campaign Disclosure Act seeks to address	21
CONCLUSION.....	23

REQUEST FOR ORAL ARGUMENT 23

COST CERTIFICATE & CERTIFICATE OF COMPLIANCE 24

TABLE OF AUTHORITIES

CASES:

United State Supreme Court

<i>Bank of Am. Corp. v. City of Miami</i> , ___ U.S. ___, 137 S. Ct. 1296 (2017)	21
<i>Buckley v. Valeo</i> , 424 U.S. 1 (1976).....	22
<i>FEC v. Akins</i> , 524 U.S. 11 (1998)	<i>passim</i>
<i>Lexmark Int’l Inc. v. Static Control Components, Inc.</i> , 572 U.S. 118 (2014)	21

Iowa Supreme Court

<i>Alons v. Iowa Dist. Court for Woodbury County</i> , 696 N.W.2d 858 (Iowa 2005)	15, 16
<i>Hedlund v. State</i> , 875 N.W.2d 720 (Iowa 2016)	12

Other Jurisdictions

<i>Alliance for Democracy v. FEC</i> , 335 F. Supp.2d 39 (D.D.C. 2004)	20
---	----

OTHER AUTHORITIES:

Iowa Code § 17A.19.....	22
Iowa Code § 68A.401.....	13
Iowa Code § 68A.402A	9, 10, 13, 18
Iowa Code § 68A.503.....	9
Iowa Code § 68B.32B	13, 14, 15
Iowa Code § 68B.32D	15
Iowa Code § 68B.33.....	15, 22

351 Iowa Admin. Code § 4.17	10
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Iowa R. App. P. 6.1101.....	7
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Ryan Foley, <i>Review: Iowa Gov. Kim Reynolds flew to Liberty Bowl on vendor’s plane</i> , Des Moines Register (Sept. 13, 2018)	9
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STATEMENT OF ISSUES

WHETHER GARY DICKEY, JR. HAS INFORMATIONAL STANDING AS AN IOWA VOTER TO SEEK JUDICIAL RELIEF FROM THE IOWA ETHICS AND CAMPAIGN DISCLOSURE BOARD'S DECISION NOT TO INVESTIGATE THE KIM REYNOLDS FOR IOWA CANDIDATE COMMITTEE'S PLAINLY INCORRECT CAMPAIGN DISCLOSURE REPORT

Alliance for Democracy v. FEC, 335 F. Supp.2d 39 (D.D.C. 2004)

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Bank of Am. Corp. v. City of Miami, ___ U.S. ___,
137 S. Ct. 1296 (2017)

Buckley v. Valeo, 424 U.S. 1 (1976)

FEC v. Akins, 524 U.S. 11 (1998)

Hedlund v. State, 875 N.W.2d 720 (Iowa 2016)

Lexmark Int'l Inc. v. Static Control Components, Inc.,
572 U.S. 118 (2014)

Iowa Code § 17A.19

Iowa Code § 68A.401

Iowa Code § 68A.402A

Iowa Code § 68A.503

Iowa Code § 68B.32B

Iowa Code § 68B.32D

Iowa Code § 68B.33

351 Iowa Admin. Code § 4.17

Iowa R. App. P. 6.1101

ROUTING STATEMENT

The question presented is whether Gary Dickey, Jr. possesses informational standing to seek judicial review of the Iowa Ethics and Campaign Disclosure Board's decision not to investigate the Kim Reynolds for Iowa Candidate Committee's plainly incorrect campaign disclosure report. This question of first impression in Iowa involves an urgent issue of broad public importance because our campaign finance law is designed to guarantee citizens access to accurate information about their gubernatorial candidates so they can make informed decisions when they exercise their franchise rights. The Board's refusal to investigate plainly incorrect information in the Governor's campaign disclosure reports undermines the law's central purpose. Not only has Dickey been injured by the incorrect reporting, so has every Iowan who relies upon campaign finance information when choosing between gubernatorial candidates. Accordingly, retention by the Iowa Supreme Court is necessary. Iowa R. App. P. 6.1101(2)(c),(d).

STATEMENT OF THE CASE

This case arises from Gary Dickey, Jr.'s complaint to the Iowa Ethics and Campaign Disclosure Board ("Board") alleging that the Kim Reynolds for Iowa candidate committee incorrectly reported the value of an in-kind contribution on its campaign disclosure report. The contribution was for private jet service from a state vendor to shuttle Governor Kim Reynolds and her husband to and from the Liberty Bowl football game in 2017. The committee's reported amount of \$2,880 as the fair market value of the contribution is plainly incorrect. Nonetheless, the Board dismissed Dickey's complaint without an investigation.

Dickey sought judicial review in the Iowa District Court for Polk County. The Board filed a pre-answer motion to dismiss in which it contended that Dickey lacked standing. The district court granted the Board's motion. Dickey appeals, arguing that he has information standing under *FEC v. Akins*, 524 U.S. 11 (1998).

STATEMENT OF THE FACTS

On December 30, 2017, Governor Kim Reynolds and her husband flew to Memphis, Tennessee to watch the Iowa State Cyclones football team play in the Liberty Bowl and to contemporaneously attend a campaign event. (App. at 7). They traveled on a 2010 Gulfstream G200 jet owned by Sedgwick — a Memphis-based company that administers workers compensation claims filed by injured state employees. (App. at 7); *see also* Ryan Foley, *Review: Iowa Gov. Kim Reynolds flew to Liberty Bowl on vendor's plane*, Des Moines Register (Sept. 13, 2018).¹ Iowa campaign finance law prohibits corporate contributions to candidate committees. Iowa Code § 68A.503. To get around this prohibition, Sedgwick's chief operating officer, David North, reimbursed the company for the cost of the jet service and provided the flight to the Kim Reynolds for Iowa candidate committee in the form of an in-kind contribution. (App. at 7). This arrangement is legal so long as the in-kind contribution is properly disclosed in the candidate committee's campaign finance disclosure reports. Iowa Code § 68A.402A(1)(d).

To satisfy the legal requirement for proper disclosure, the candidate committee must “report the estimated fair market value of the in-kind contribution at the time it is provided to the committee.” *Id.* Similarly, the Board’s administrative rules require a candidate committee to report an in-kind contribution at “the actual (if known) or estimated fair market value of the good or service received.” 351 Iowa Admin. Code § 4.17(1),(6). To that end, the Kim Reynolds for Iowa Campaign disclosed North’s in-kind contribution on its January 19, 2018, Schedule E as “Travel Flight” in the amount of \$2,880.00. (App. at 8).

On September 17, 2018, Gary Dickey Jr. filed a written complaint with the Board asserting that the Kim Reynolds for Iowa candidate committee “underreported the fair market value of an in-kind contribution from David North in the form of private jet service for Kim Reynolds and her husband to and from Memphis, Tennessee on or about December 30, 2017.” (App. at 8). The complaint cited the applicable provisions of Iowa law setting forth the requirement that in-kind contributions be reported at fair market value. (App. at 9). The complaint included quotations

from three private jet service providers, which indicate that fair market value for a similar roundtrip flight between Des Moines and Memphis for two passengers to be far in excess of \$2,880.00. (App. at 8).

The matter came before the Board on September 20, 2018, and the members present voted unanimously to dismiss Dickey's complaint. (App. at 8). The same day, the Board issued a written "Order Dismissing Complaints." (App. at 8, 18-25). In its Order, the Board concluded "the valuations of the flights in this case appear to be consistent with . . . IRS Regulation section 1.61-21." (App. at 8, 24). The Board also concluded that its "rule 351—4.47 allows the contributor, Mr. North, to estimate the fair market value of the trip using coach class airfare." (App. at 8, 24). Both conclusions are incorrect as a matter of law. For this reason, Dickey filed a motion to reconsider, which the Board denied without consideration. (App. at 9).

On October 9, 2018, Dickey filed a petition for judicial review in the Iowa District Court for Polk County. (App. at 6-11). The Board filed a motion to dismiss on the basis that Dickey lacked

standing to challenge the Board’s dismissal of his complaint. (App. at 12-17). On December 26, 2018, the court dismissed Dickey’s complaint, holding that he suffered no injury because he “has not been deprived of any information.” (App. at 48, 50). This appeal followed. (App. at 52).

ARGUMENT

THE DISTRICT COURT’S MOTION TO DISMISS MUST BE REVERSED BECAUSE DICKEY SUFFERED INFORMATIONAL INJURY BY THE BOARD’S REFUSAL TO REQUIRE THE KIM REYNOLDS FOR IOWA CANDIDATE COMMITTEE TO CORRECT A PLAINLY INCORRECT CAMPAIGN DISLCOSURE REPORT

Preservation of Error

The standing issue has been preserved by virtue of the Board’s motion to dismiss and the Court’s ruling squarely addressing the issue. (App. at 12-17, 41-50).

Standard of Review

This Court reviews a district court’s ruling on a motion to dismiss for correction of errors at law. *Hedlund v. State*, 875 N.W.2d 720, 725 (Iowa 2016).

Analysis

A. Applicable legal principles

The Iowa Campaign Disclosure Act (“ICDA”) seeks to bring transparency to political process, in part, by requiring candidate committees to file publicly periodic reports disclosing contributions and expenses. Iowa Code § 68A.401. As relevant to this appeal, the ICDA requires candidate committees to report “the name and mailing address of each person who has made one or more in-kind contributions.” *Id.* § 68A.402A(1)(d). In addition, their reports must include “the estimated fair market value of the in-kind contribution at the time it is provided to the committee.”

Id.

The Iowa legislature has specifically provided that “any person may file a complaint alleging that a . . . committee . . . has committed a violation of chapter 68A.” Iowa Code § 68B.32B(1). A complaint must include the name and address of the complainant, a statement of the facts believed to be true that form the basis of the complaint, including the sources of information and approximate dates of the acts alleged, and a certification by

the complainant under penalty of perjury that the facts stated to be true are true to the best of the complainant's knowledge. *Id.* Board staff reviews the complaint and advises the chairperson whether it sufficiently alleges facts that would establish:

- (a) A violation of chapter 68A;
- (b) Such violation occurred within the past three years; and
- (c) The subject of the complaint is within the Board's jurisdiction.

Id. §§ 68B.32B(2),(4). The chairperson refers the complaint to the Board "for a formal determination . . . of the legal sufficiency of the allegations." *Id.* § 68B.32B(5). If the Board determines none of the allegations contained in the complaint are "legally sufficient," then it shall be dismissed. *Id.* § 68B.32B(6). If the Board determines that any allegation in the complaint is legally sufficient, it shall be referred to the Board staff for investigation.

Id. The purpose of the investigation "is to determine whether there is probable cause to believe that there has been a violation" of chapter 68A. *Id.* § 68B.32B(8). If probable cause exists, the Board may initiate a contested case hearing and authorize staff to

seek informal voluntary compliance. *Id.* §§ 68B.32B(9), (10). If the Board determines a violation has occurred, it may impose statutory sanctions. *Id.* § 68B.32D. “Judicial review of the actions of the [B]oard may be sought in accordance with chapter 17A.” *Id.* § 68B.33.

B. Dickey has standing because he suffered a concrete and particularized informational injury as a result of the plainly incorrect campaign disclosure report

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.*

The Court in *Akins* also determined that plaintiffs’ harm was “fairly traceable” to the FEC’s decision to dismiss their complaint. *Id.* at 25. “[T]hose adversely affected by a discretionary agency decision generally have standing to complain that the agency based its decision upon an improper legal ground.”

Id. That is especially true where Congress explicitly indicates its intent to allow judicial review of an agency decision. *Id.* at 26.

Accordingly, courts are able to “redress” plaintiffs’ injury in fact in a manner that is sufficient to give rise to standing. *Id.* at 25.

From *Akins*, it follows *a fortiori* that Dickey has suffered an injury in fact that satisfies the standing requirement. His complaint to the Board asserted that the Kim Reynolds for Iowa candidate committee failed to truthfully disclose the fair market value of David North’s in-kind contribution in the form of private jet service from Des Moines to Memphis to watch the Liberty Bowl. (App. at 8). Accurate information, he contends, is necessary for him to evaluate the gubernatorial candidates. (App. at 29).

This informational injury is precisely the type that *Akins* recognizes as “concrete and particular.” *Akins*, 524 U.S. at 21. The ICDA requires the Kim Reynolds for Iowa candidate committee to disclose the “fair market value” Mr. North’s contribution. Iowa Code § 68A.402(1)(A). Dickey’s “inability to obtain [an accurate fair market value]” from the Kim Reynolds for

Iowa report hinders his ability “to evaluate [Kim Reynolds’ gubernatorial candidacy]” and the “role that [Sedgwick and North’s] assistance might play in a specific election”. *Compare Akins*, 524 U.S. at 21. Thus, under *Akins*, “the informational injury at issue here, directly related to voting, the most basic of political rights, is sufficiently concrete and specific” to satisfy the standing requirement. *Id.* at 24-25.

Despite the clear application of the *Akins* decision to this case, the district court concluded that “Mr. Dickey has not been injured by the Board’s action” because “he has not been deprived of any information.” (App. at 48). The court noted that the Kim Reynolds for Iowa candidate committee disclosed the nature of the contribution, its value, and the identity of the donor. (App. at 48). The court reasoned that no injury occurred because Dickey simply “can independently evaluate the reported value.” (App. at 48).

In the district court’s view, Dickey is not injured so long as *some information is disclosed*—even if the information is not correct. The mere recitation of district court’s logic demonstrates its fallacy. Statutory campaign disclosure requirements, such as

those contained in the ICDA and FECA, “establish[] a right *truthful information* regarding campaign contributions and expenditures, and that right adheres both before and after the election at issue.” *Alliance for Democracy v. FEC*, 335 F. Supp.2d 39, 47-48 (D.D.C. 2004) (emphasis added) (citing *Akins*, 524 U.S. at 21). This makes sense because a voter’s ability to evaluate a candidate is similarly thwarted when a disclosure report contains inaccurate information. This is a case in point. The grossly undervalued reporting of North’s in-kind contribution minimizes the appearance of his potential influence of the candidate. That is no small fact considering he is the CEO of the company that administers workers compensation claims filed by injured state employees. Surely, Dickey is as equally injured from receiving misleading information about the value of North’s contribution than he would be from receiving no information about its value. Indeed, the fact that he had to obtain quotes from airlines on his own to ascertain the true fair market value of North’s in-kind contribution is an injury in itself.¹

¹ The district court’s analysis will lead to absurd results. For

C. Dickey satisfies the prudential requirements to challenge the Board’s decision because his injury is the kind that the Iowa Campaign Disclosure Act seeks to address

In discussing the standing doctrine, the United States Supreme Court has also referred to a plaintiff’s need to satisfy “prudential” or “statutory standing” requirements. *Lexmark Int’l Inc. v. Static Control Components, Inc.*, 572 U.S. 118, 128 n.4 (2014). In *Lexmark*, the Court said the label “prudential standing” was misleading, for the requirement at issue is in reality tied to a particular statute. *Id.* The question is whether the statute grants the plaintiff the cause of action that he asserts. *Bank of Am. Corp. v. City of Miami*, ___ U.S. ___, 137 S. Ct. 1296, 1302 (2017). In answering the question, the Court presumes that “a statute ordinarily provides a cause of action only to plaintiffs whose interest fall within the zone of interests protected by the law itself.” *Id.*

example, a complainant would have standing to seek judicial review if committee fails to report any value for an in-kind contribution but not if the committee reports the value as \$0.00. Moreover, no party will ever have standing to challenge falsely reported contribution values because, according to the district court, no injury results from receiving incorrect information.

The Iowa General Assembly expressly grants a complainant the right to seek judicial review of a Board’s action under chapter 17A. Iowa § 68B.33. Chapter 17A, in turn, permits any person “who is aggrieved or adversely affected by any final agency action is entitled to judicial review.” *Id.* § 17A.19(1). “History associates the word ‘aggrieved’ with a [legislative] intent to cast the standing net broadly—beyond the common-law interests and substantive statutory rights upon which ‘prudential’ standing traditionally rested.” *Akins*, 524 U.S. at 19.

The United States Supreme Court has explained the purpose behind campaign finance disclosure requirements as follows:

[D]isclosure provides the electorate with information “as to where political campaign money comes from and how it is spent by the candidate in order to aid the voters in evaluating those who seek [public] office. It allows voters to place each candidate in the political spectrum more precisely than is often possible solely on the basis of party labels and campaign speeches. The sources of a candidate’s financial support also alert the voter to the interests to which a candidate is most likely to be responsive and thus facilitate predictions of future performance in office.

Buckley v. Valeo, 424 U.S. 1, 66-67 (1976). There can be no meaningful dispute, therefore, that the ICDA seeks “to protect

individuals such as [Dickey] from the kind of harm [he says he has] suffered, *i.e.*, failing to receive particular information about campaign-related activities.” *Akins*, 524 U.S. at 22.

Consequently, the injury of which Dickey complains is injury of the kind that the ICDA seeks to address. *Id.*

CONCLUSION

Gary Dickey, Jr. asks this Court to reverse the district court’s decision and remand with appropriate instructions.

REQUEST FOR ORAL ARGUMENT

Gary Dickey, Jr. requests to be heard in oral argument.

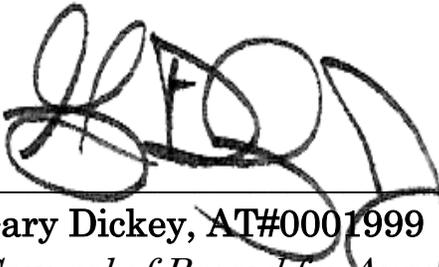
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