

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*

APPLICATION FOR FURTHER REVIEW
(IOWA COURT OF APPEALS DECISION: SEPTEMBER 11, 2019)

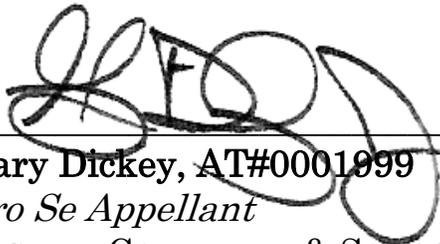
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QUESTION PRESENTED FOR FURTHER REVIEW

Governor Kim Reynolds and her husband accepted an in-kind contribution in the form of private jet service to the 2017 Liberty Bowl football game from an executive of a company that does significant business with the State of Iowa. Instead of reporting the contribution at the fair market value, as required by Iowa Code section 68A.402A(1)(d), Governor Reynolds' candidate committee reported an amount of \$2,880. Recognizing that the amount was plainly incorrect, Gary Dickey Jr. filed a complaint with the Iowa Ethics and Campaign Disclosure Board. The Board, however, dismissed the complaint without even initiating an investigation. Dickey sought judicial review from the Iowa District Court for Polk County, which dismissed the petition on the basis that he lacked standing. The District Court concluded Governor Reynolds candidate committee incorrectly reported the value of the private jet service but held that Dickey suffered no injury because he "has not been deprived of any information." The Iowa Court of Appeals affirmed. The question presented for further review is:

Whether Gary Dickey, Jr. possesses informational standing, as set forth in *FEC v. Akins*, 524 U.S. 11 (1998), 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?

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STATEMENT IN SUPPORT OF FURTHER REVIEW

The Governor of Iowa accepted private jet service from the executive of a large state vendor and then grossly underreported its value on her campaign disclosure report. (App. at 7-8). When presented with this information, the Iowa Ethics and Campaign Disclosure Board refused to conduct an investigation as required under Iowa Code section 68B.32B(6). On judicial review, the district court concluded that the Board erroneously relied on administrative rule 351-4.47(4) in dismissing Dickey's complaint. (App. at 46) ("Subrule 4.47(4) does not specifically name a candidate's committee or a permissible contributor as reimbursing entities"). Nonetheless, the court concluded that Dickey had not been sufficiently injured to confer standing because he "has not been deprived of any information." (App. at 48, 50). The court of appeals affirmed.

The decisions below warrant further review for three reasons. First, the issue of informational standing presents a question of first impression in Iowa. Second, the decisions below are manifestly incorrect. Third, this appeal involves an issue of

broad public importance. 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. Accordingly, the Iowa Supreme Court should ultimately decide this case. Iowa R. App. P. 6.1103(1)(b).

STATEMENT OF THE CASE

Gary Dickey, Jr. filed a 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 reporting of the fair market value of the contribution as \$2,880 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 appealed, arguing that he has information standing under *FEC v. Akins*, 524 U.S. 11 (1998). The Iowa Court of Appeals affirmed. *Dickey v. Iowa Ethics and Campaign Disclosure Bd.*, slip op. 19-0094 (Iowa Ct. App. Sept. 11, 2019).

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).

REASONS FOR GRANTING FURTHER REVIEW

DICKEY SUFFERED INFORMATIONAL INJURY BY THE BOARD’S REFUSAL TO REQUIRE THE KIM REYNOLDS FOR IOWA CANDIDATE COMMITTEE TO CORRECT A PLAINLY INCORRECT CAMPAIGN DISCLOSURE REPORT

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. The court of appeals failed to meaningfully consider whether Dickey has informational standing under the United States Supreme Court’s decision in *FEC v. Akins*

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.

As explained by Professor Cass Sunstein, the standing analysis in *Akins* consists of four parts. Cass R. Sunstein, *Informational Regulation and Informational Standing: Akins and Beyond*, 147 U. Pa. L. Rev. 613, 634 (1999). First, “prudential standing” was not an issue because Congress expressly granted

standing to “any party aggrieved.” *Id.* Second, the plaintiffs suffered injury in fact by virtue of their inability to obtain information that the FECA requires to be made public. *Id.* at 635. Third, the generalized character of the grievance was no obstacle with an express congressional grant of standing. *Id.* at 636. Fourth, the plaintiffs’ injury could be remedied by a decree in their favor. *Id.* at 636-37.

All four parts of *Akins* apply equally to this case. First, the Iowa General Assembly expressly granted judicial review to any person “who is aggrieved or adversely affected” by the agency’s action. Iowa Code § 17A.19(1); *see also* Iowa Code § 66B.33 (expressly authorizing judicial review under Chapter 17A). Second, Dickey suffered injury in fact by his inability to obtain truthful information the ICDA requires to be made public. *Id.* § 68A.402A(1)(d) (requiring disclosure in publicly filed reports of the fair market value of in-kind contributions to candidate committees). Third, the generalized character of the grievance is no obstacle because of the statutory grant of judicial review. Fourth, Dickey can be remedied by a decree in his favor. *Id.* §

68B.32D(b),(c) (authorizing the Board to require candidate committee to take remedial action to cure the violation and report information required by chapter 68A).

<i>FEC v. Akins</i> , 524 U.S. 11 (1998)	Dickey's Complaint
Any party aggrieved . . . may seek district court review of the dismissal. <i>Id.</i> at 19 (citing 2 U.S.C. § 437g(a)(8)(A)).	Any person . . . Who is aggrieved or adversely affected by any final agency action is entitled to judicial review thereof. Iowa Code 68B.33 (expressly authorizing judicial review under section 17A.19(1)).
FECA requires committees to file "complex FEC reports that include lists of donors . . . contributions, expenditures, and any other disbursements." <i>Id.</i> at 14 (citing 2 U.S.C. §§ 432-34).	ICDA requires committees to disclose the fair market value of in-kind contributions. Iowa Code § 68A.402A(1)(d).
"[T]he fact that [the informational injury] is widely shared does not deprive Congress of constitutional power to authorize its vindication in the federal courts." <i>Id.</i> at 24-25.	The fact that Dickey's information injury is widely shared does not deprive the Iowa General Assembly of its power to authorize its vindication in state courts.
"The courts in this case can 'redress' the 'injury in fact.'" <i>Id.</i> at 25.	The Board has the authority to require remedial action to cure the violation. Iowa Code § 68B.32D

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

The court of appeals' treatment of *Akins* is even more suspect. Despite Dickey's citation to the *Akins* decision over twenty-four times in his briefs, the court of appeals decision makes virtually no acknowledge of the opinion or the doctrine of

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

informational standing. For this reason alone, further review is should be granted.

C. The court of appeals view that Iowa Code chapter 68B does not authorize complaints to seek judicial review of Board action is demonstrably false.

Central to the court of appeals' holding is the view that "Iowa Code chapter 68B contains no provision expressly authorizing complainants to seek judicial review if their complaint is dismissed by the Board." *Dickey*, slip op. at 3. This view is demonstrably false. Iowa Code section 68B.33 expressly provides:

Judicial review of the actions of the board may be sought in accordance with chapter 17A.

Iowa Code § 68B.33 (emphasis added). Clearly, the Board's dismissal of *Dickey's* complaint constitutes "action" contemplated by section 68B.33. Indeed, it is hard to imagine a more clear expression of legislative intent to make judicial review available to parties whose complaints have been dismissed by the Board. If the Iowa General Assembly thought chapter 17A was sufficient alone to provide judicial review, it would have omitted section 68B.33 entirely. *In re Bo Li*, 911 N.W.2d 423, 428 (Iowa 2018).

(noting that courts must interpret statutes in a way that avoid rendering parts of them superfluous).

“[T]he principal question for *Akins*, for purposes of ‘injury in fact,’ is whether Congress or any other source of law gives the litigant a right to bring suit.” Sunstein, 147 U. Pa. L. Rev. at 642-43. “[W]here Congress has created a legal interest and a right to bring suit, the Constitution does not stand as an obstacle.” *Id.* at 643. The Iowa General Assembly provides Dickey with the statutory right to receive the fair market value of the in-kind contribution along with the right to bring suit when the Board makes a legal error that deprives him of that information. *See* Iowa Code §§ 68A.402A(1)(d), 68B.33.

More importantly, unlike the FECA, which only requires disclosure of *the existence* of an in-kind contribution, the ICDA specifically requires disclosure of *the value* of an in-kind contribution. *Compare* 52 U.S.C. § 30104 *with* Iowa Code § 68A.402A(1)(d). The Iowa General Assembly could have parroted the reporting requirements of the FECA. Instead it chose to require disclosure of the fair market value of an in-kind

contribution in addition to other information. The only reasonable inference is the General Assembly believed voters should have right to know the value of the contribution in addition to its existence. That makes sense because the ICDA's disclosure requirements exist, in part, to allow voters like Dickey to evaluate and compare competing candidates for public office. *Buckley v. Valeo*, 424 U.S. 1, 66-67 (1976). Essential to this endeavor is that voters like Dickey are provided with correct information so that he can make an apples-to-apples comparison of candidates' in-kind contributions. The Kim Reynolds for Iowa committee's reporting of North's contribution at below fair market value hinders Dickey's ability to compare corporate influence in her campaign with a competing candidate who accurately reports in-kind contributions. For this reason, statutory campaign disclosure requirements "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 at 47-48 (emphasis added)

(citing *Akins*, 524 U.S. at 21). The failure to provide truthful information is what gives rise to Dickey's injury.

D. The court of appeals' reliance on the *Lindemann* decision from the Maine Supreme Court is misplaced

Instead of addressing informational standing under the *Akins* decision, the court of appeals adopted the reasoning of the Maine Supreme Court's decision in *Lindemann v. Comm'n on Governmental Ethics & Election*, 961 A.2d 538 (Me. 2008). *Dickey*, slip op. at 6. In *Lindemann*, a citizen made an investigation request to the Maine Commission on Governmental Ethics and Election Practices asserting that a public policy group was a political action committee required to register and file reports with the Commission. *Id.* at 540. Alternatively, Lindemann asserted the group was required to file an independent expenditure report. *Id.* The Commission addressed the request at several meetings and concluded that the group was not a PAC. *Id.* The Commission did, however, require the group to file an independent expenditure report. *Id.* at 541. Lindemann appealed to the Superior Court pursuant to the Maine

Administrative Procedure Act (“MAPA”). *Id.* The court dismissed his appeal, concluding that he lacked standing. *Id.*

The court of appeals’ reliance on *Lindemann* is misplaced for three reasons. First, unlike Iowa Code section 68B.33, there “is no express provision here or elsewhere in the Maine campaign statutes allowing or precluding judicial review of Commission enforcement determinations.” *Compare id.* at 542 with Iowa Code § 68B.33. Second, unlike the Board in this case, the Commission in *Lindemann* did not fail to act on the complaint. As the Maine Supreme Court noted, the “Commission reviewed and accepted Lindemann's request and undertook an extensive investigation that included oral testimony at Commission meetings and review of extensive written submissions and documents.” *Lindemann*, 961 A.2d at 542. In this case, the Board dismissed Dickey’s complaint as legally insufficient *without any investigation* on the basis of an erroneous interpretation of the law. (App. at 10-11). Third, Lindemann lacked informational standing under *Akins* because the Commission required the public policy group to file a disclosure report. Accordingly, Lindemann “gained information on

[the group's] expenditures made for the purpose of initiating, promoting, or influencing [a referendum]." *Id.* at 545. "Any informational injury . . . ceased to exist when this information was disclosed." *Id.* Here, Dickey has not been provided with the fair market value of Governor Reynolds' private jet service, which the ICDA requires to be disclosed.

CONCLUSION

The reasons set forth above, Gary Dickey, Jr. asks this Court to grant further review, 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.

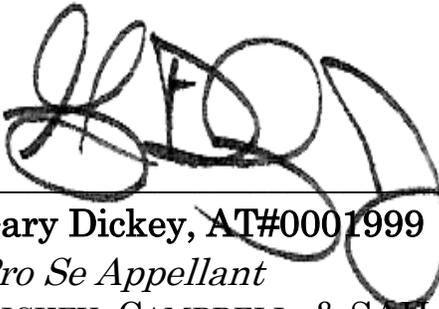
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I hereby certify that the costs of printing the Appellant's brief was \$7.00, and that that amount has been paid in full by me.

CERTIFICATE OF COMPLIANCE

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