IN THE SUPREME COURT OF IOWA

No. 19–0094

GARY DICKEY, JR.,

Appellant,

vs.

IOWA ETHICS & CAMPAIGN DISCLOSURE BOARD,

Appellee.

APPEAL FROM THE IOWA DISTRICT COURT
FOR POLK COUNTY
HONORABLE JEANIE VAUDT, JUDGE

APPELLEE'S RESISTANCE TO APPLICATION FOR FURTHER REVIEW (COURT OF APPEALS DECISION DATE: SEPTEMBER 11, 2019)

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STATEMENT OPPOSING FURTHER REVIEW

The Court should deny Appellant Gary Dickey, Jr.'s application for further review both because it mischaracterizes the proceedings below and because none of the grounds that typically justify further review exist in this case.

The predominant phrase in Dickey's application is "plainly incorrect." In his view, the Kim Reynolds for Iowa candidate campaign committee (KRFI) submitted what Dickey believes to be a "plainly incorrect" campaign disclosure report to the Iowa Ethics & Campaign Disclosure Board (the Board). Thus, Dickey treats that phrase as though it were established, repeating it (or some variant of it) frequently and even asserting that the district court ruled both that the report was incorrect and that the Board committed legal error. (Dickey Application at 3, 8, 9, 10, 13, 21–22.)

The district court did no such thing. Instead, it decided the case on standing grounds. That means the "correctness" of KRFI's campaign disclosure report simply does not matter. *See Richards v. Iowa Dep't of Revenue & Fin.*, 454 N.W.2d 573, 574 (Iowa 1990) ("At issue is petitioner's right of access to the district court, not the merits of his allegations."). And the district court so held.

For example, Dickey cites the appendix for the proposition that the district court purportedly ruled the Board committed legal error. (Dickey Application at 8.) But in the *very next paragraph* the district court explains Dickey lacks standing "[r]egardless of which party is more correct about valuation." (App. 47.) Thus, the district court explicitly made no ruling at all on the merits of Dickey's complaint to the Board. In other words, while the question whether KRFI's report is "plainly incorrect" is not relevant to the standing issue, Dickey's further review application *is* plainly incorrect about the district court's legal conclusions.

Dickey offers three reasons why he contends further review is necessary: a purported question of first impression involving a United States Supreme Court case, decisions below that Dickey contends are "manifestly incorrect," and an issue of broad public importance. (Dickey Application at 8–9.) *See* Iowa R. App. P. 6.1103(1)(*b*)(1)–(2), (4). None of those grounds are met here, and accordingly, none of them justify further review.

While the court of appeals decision below was the first Iowa appellate decision to cite *FEC v. Akins*, 524 U.S. 11 (1998), the facts and the relevant statutory provisions in this case are wholly unlike the facts and the relevant statutory provisions analyzed in *Akins*. In *Akins*, the complainant was unable

to obtain *any* information about the relevant political committee. *See* 524 U.S. at 13 ("[T]he FEC has refused to require AIPAC to make disclosures . . . ."). Here, by contrast, Dickey can obtain information—he just contends that information is inaccurate.[1] As a post-*Akins* federal case explains, it is qualitative factors, "rather than the precise value" of a contribution, that can confer standing under *Akins*. *See Citizens for Responsibility & Ethics in Wash. v. FEC*, 401 F. Supp. 2d 115, 121 (D.D.C. 2005), *aff'd*, 475 F.3d 337, 339 (D.C. Cir. 2007).

Additionally, the statutory scheme at issue in *Akins* specifically addressed dismissed complaints. The Federal Election Campaign Act (FECA) authorizes those "aggrieved by an order . . . dismissing a complaint filed by such party" to file a petition in federal court. 52 U.S.C. § 30109(a)(8)(A). Iowa Code chapter 68B, however, does not contain any express mention of dismissed complaints. *See* Iowa Code § 68B.33. Instead, judicial review is available only to those aggrieved by a Board decision within

[1] Notably, even the case (upon which Dickey relies) that purportedly recognized "a right to *truthful* information regarding campaign contributions and expenditures" ultimately concluded that the information the complainant sought—"the *precise value* of a mailing list"—could not have a concrete effect on voting under *Akins* and was insufficient to confer standing. *Alliance for Democracy v. FEC (AFD I)*, 335 F. Supp. 2d 39, 47–48 (D.D.C. 2004) (emphasis added).

the meaning of chapter 17A—such as a candidate or organization the Board sanctions. *See Iowans for Tax Relief v. Campaign Fin. Disclosure Comm'n*, 331 N.W.2d 862, 863 (Iowa 1983) (noting an organization sought judicial review after the precursor to the present-day Board "found reasonable grounds to believe" that organization had "violated the campaign finance disclosure requirements"). Not every person who interacts with the Board is aggrieved by a decision the Board makes following that interaction. *See Richards*, 454 N.W.2d at 575; *Northbrook Residents Ass'n v. Iowa State Dep't of Health*, 298 N.W.2d 330, 331 (Iowa 1980). In other words, the phrase omitted by ellipsis from the top left space in Dickey's comparison chart (Dickey Application at 20) is crucial because it demonstrates the two matters (*Akins* and this case) are not so comparable after all.[2]

Because of these significant differences, this case would be a poor vehicle through which to consider *Akins* under Iowa law. Instead, the Court

[2] Dickey's assertion that it is "hard to imagine a [clearer] expression of legislative intent to make judicial review available to parties whose complaints have been dismissed" (Dickey Application at 23) is shortsighted. It is very easy to imagine. The legislature could have adopted language mirroring FECA and expressly referring to dismissed complaints; or it could have stated plainly in chapter 68B that "a person whose complaint is dismissed may seek judicial review;" or it could have authorized citizen standing to challenge Board decisions the way it has with respect to open meetings and open records. *See* Iowa Code §§ 21.6(1), 22.10(1).

should wait until a case involving an actual *Akins* issue: a complaint filed by a person who is unable to obtain *any* information about a committee they assert must file reports with the Board. *See Iowa Ins. Inst. v. Core Grp.*, 867 N.W.2d 58, 80 (Iowa 2015) (expressing a preference to wait to decide issues until "a case or cases in which they are . . . squarely presented"). An actual *Akins* issue might arise in a scenario like *Iowans for Tax Relief*, 331 N.W.2d at 864, where the precursor to the present-day Board made a "legal determination that IFTR was a 'political committee' subject to the reporting requirements" of Iowa law. By contrast, this case is much different because it only involves "a specific monetary value of an item that has already been reported." *Alliance for Democracy v. FEC (AFD II)*, 362 F. Supp. 2d 138, 147 (D.D.C. 2005). Further review is not warranted to consider the applicability under Iowa law of a nonbinding federal case that addresses a materially different legal issue under a materially different statutory framework.

In any event, even indulging the assumption that federal decisions interpreting linguistically different federal statutes control a matter of Iowa law, another federal decision directly defeats Dickey's claim of standing. In *Common Cause v. FEC*, an organization filed a complaint with the FEC

alleging that some candidates "violated federal campaign election law . . . by failing *accurately* to report" contributions and expenditures. 108 F.3d 413, 415 (D.C. Cir. 1997) (per curiam) (emphasis added). "The relief requested by the complainants was an investigation" of the relevant candidates and committees. *Id.* The complainants also asserted the inaccurate disclosures injured the organization's member voters by depriving them "of vital political information." *Id.* at 417. The court concluded a complainant "cannot establish standing merely by asserting that the [agency] failed to process its complaint." *Id.* at 419.

Dickey's complaint here is nearly identical. He alleges KRFI violated Iowa campaign finance law by failing accurately to report the value of a contribution. The relief he requests is a court order compelling the Board to commence an investigation of the KRFI committee. (App. 11.) He also asserts the purportedly inaccurate disclosure injures him by depriving him of vital political information. Therefore, under *Common Cause*, Dickey "cannot establish standing merely by asserting that the [Board] failed to process [his] complaint." *Id.*; *see also Citizens for Responsibility*, 401 F. Supp. 2d at 122 (holding a "mere difference of opinion" about the value of a reported contribution is insufficient to confer standing).

Dickey's second purported ground for further review is that the lower courts' rulings are "manifestly incorrect." But he does not identify any "decision of this court or the court of appeals" that conflicts. Iowa R. App. P. 6.1103(1)(*b*)(1). That alone is reason to deny his further review application. Furthermore, both lower courts' rulings in this case are fully consistent with the holding in *Richards* that "a person may be a proper party to agency proceedings [but] not have standing to obtain judicial review." *Richards*, 454 N.W.2d at 575.

That leaves Dickey's third contention: that further review is necessary to address an issue of broad public importance. But the issue in this case is not about the fundamental right of suffrage, nor does the integrity of Iowa's campaign finance and election system hang in the balance. *Cf. Bowers v. Polk Cty. Bd. of Supervisors*, 638 N.W.2d 682, 692 (Iowa 2002) (resisting a litigant's invitation to view the issue purportedly at stake through the broadest possible lens). Instead, the issue in this case is whether a citizen who reads disclosure reports but is not a member of the Board may dictate or have any say in how the Board performs its statutory functions. Because the answer to that question is and should be "no," the Court should deny Dickey's application for further review.

CONCLUSION

After the Board receives a complaint, "concluding that no action or investigation will be undertaken creates no right of judicial review in [the complainant] or any other member of the general public." *Lindemann v. Comm'n on Governmental Ethics & Practices*, 961 A.2d 538, 544 (Me. 2008). Accordingly, the Court should deny Dickey's application for further review.

CERTIFICATE OF COMPLIANCE

This brief complies with the typeface requirements and type-volume limitation of Iowa Rs. App. P. 6.903(1)(d) and 6.903(1)(g)(1) or (2) because this brief has been prepared in a proportionally spaced typeface using Times New Roman in 14-point font and contains 1,444 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

/s/ David M. Ranscht
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PROOF OF SERVICE

I, David M. Ranscht hereby certify that on the 10th day of October, 2019, I or a person acting on my behalf did serve Appellee's Resistance to Application for Further Review on all other parties to this appeal by EDMS to the respective counsel for said parties:

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CERTIFICATE OF FILING

I, David M. Ranscht, hereby certify that on the 10th day of October, 2019, I or a person acting on my behalf filed Appellee's Resistance to Application for Further Review with the Clerk of the Iowa Supreme Court by EDMS.

/s/ David M. Ranscht
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