IN THE SUPREME COURT OF IOWA

S. Ct. No. 20-0997
Polk Co. No. CVCV060212

JENNIFER ANN ASKVIG,

Petitioner-Appellant,

vs.

SNAP-ON LOGISTICS CO., a/k/a,
SNAP-ON TOOLS CORPORATION,

Respondent-Appellee.

APPEAL FROM THE IOWA DISTRICT COURT
IN AND FOR POLK COUNTY
Hon. Jeffrey Farrell,
JUDGE

APPELLANT'S PAGE PROOF COPY OF REPLY BRIEF

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1. This Page Proof Copy of Appellant's Reply Brief complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(g)(1) or (2) because this Page Proof Copy of Appellant's Brief and Argument contains 5,110 words, excluding the parts of the petition exempted by Iowa R. App. P. 6.903 (1)(g)(1).

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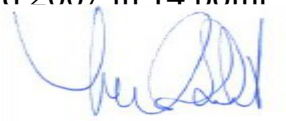

_____ November 9th, 2020

Mark S. Soldat Date

ARGUMENT

Division I

THE DISTRICT COURT ERRED WHEN IT DETERMINED THAT THE SUPREME COURT'S 4/02/20 SUPERVISORY ORDER AND ITS SUPPLEMENT DID NOT APPLY TO THE STATUTE OF LIMITATIONS FOR SEEKING JUDICIAL REVIEW OF AN AGENCY'S FINAL DECISION IN A CONTESTED CASE.

The one issue in Askvig's division that Snap-On did not address in its brief, pp. 26-33, pertained to the meaning in the supreme court's 4/02/20 supervisory order of the words "similar deadline[s]." It did not, even though this was the dispositive issue in this division.

In that regard, it is known what is meant by the words "statute of limitation." "A statute of limitation bars, after a certain period of time, the right to prosecute an accrued cause of action." *Bob McKiness Excavating & Grading, Inc. v. Morton Buildings, Inc.*, 507 N.W.2d 405, 408 (Iowa 1993), [*emph. supp.*].

It also is known what is meant by the words "statute of repose:" [A] statute of repose period begins to run from the occurrence of some event other than the event of an injury that gives rise to a cause of action and, therefore, bars a cause of action before the injury occurs." *Id.*, (*emph. supp.*), quoting from *Hanson v. Willis County,* 389 N.W.2d 319, 321 (N.D. 1986).

Thus, the similarity between "[a]ny statute of limitations… ['or'] statute[s] of repose" is that they "bar" any commencement of "an[y] action[1] in district court…" regardless of whether the "bar" is jurisdictional or not. Indeed, in its brief, Snap-On was unable to identify any "deadline… bar," other than the statutes of limitation and repose.

Perforce, to have any meaning, the words "similar deadline" must include deadlines which bar commencements of appellate "action," such as Iowa Code section 17A.19(3), Iowa R Civ. P. 1.1402(3), and Iowa R. App. P. 6.101(1)(b), 6.102(2), and 6.104(2). It is presumptive that the supreme court would not have used the words "similar deadline" if it did not have any meaning separate from the words "statute of limitations"… or "statute of repose."

In its brief, Snap-On also gave little to no attention to the dimensions of the judiciary's inherent power. Instead, it circumvented any discussion of those dimensions by contending that under ordinary circumstances, the supreme court had no authority to extend the time for filing judicial review cases. The shortcomings to such circumvention, however, is that 4/02/20 supervisory order was not issued in a time of ordinary circumstances. Rather, it was issued for the following expressed reasons, immediately preceding the supervisory orders:

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[1] In *Ortiz v. Loyd Roling Construction*, 928 N.W.2d 651, 652 (Iowa 2019), the supreme court referred to "an action for judicial review."

> The Iowa Supreme Court has previously issued supervisory orders relating to the spread of the novel coronavirus/COVID. The Iowa Judicial Branch continues to carefully monitor the public health situation, recognizing the need to take additional measures to reduce the spread of the virus… during this time of crisis. (3/31/20 supervisory order, p. 1, *emph. supp.*)
>
> Since March 12, 2020, the Iowa Supreme Court has issued seven supervisory orders relating to the spread of the coronavirus/COVID-19. This order combines all of those orders… to reflect the extension of the ongoing State of Public Health Disaster Emergency… (4/02/20 supervisory order, p. 1, *emph. supp.*)

Thus, the "crisis" and the "emergency" clearly constituted "one of those occasions not provided for by established methods," also "an emergency… [for] which established methods cannot and do not instantly meet… for the exercise of inherent power…. Our courts are not thus powerless. The public business is not to be left thus to suffer. A court possessing such a jurisdiction, is not limited to the very letter of the charter of its power." *Webster County Board of Supervisors v. Flattery*, 268 N.W.2d 869, 874-875 (Iowa 1978), quoting from *State ex. Rel, Hillis v. Sullivan* 48 Mont., 320, 329, 137 P. 392, 395, and *White v. Polk county*, 17 Iowa 413, 414 (1864).

In its brief, Snap-On also gave no attention to the fact that in the supreme court's 3/17/20 and 4/02/20 supervisory orders, pages 1, it directed the following rules "pursuant to its available legal authority, including Article III, section 1 and Article V, section 1 of the Iowa Constitution." In this regard, Article I, section I requires the separation of powers amongst the three branches of the government,

"except in cases hereinafter expressly directed or permitted." (*emph. supp.*) Article V, Section 1, provides that "[t]he judicial power shall be vested in a supreme court… " (*emph. supp.*)

Accordingly, the fact that the supreme court included amongst its "available legal powers" an "exception which permitted" the judicial branch to exercise normally exercised by legislature and executive branches confirms its inherent power whenever those other two branches could or did not act soon enough to protect the "emergencies" existing in the judicial branch, including in its officers of courts and their clients.

In such a situation, it simply did not matter that normally a court could not expand by tolling the time(s) for filing a judicial-review petition per Iowa Code section 17A.19(3). Likewise, in such a situation it did not matter whether the Covid-19 emergency contributed to an overwhelmed attorney to missing a quasi-appellate filing deadline, thereby causing the attorney's client to be "barred" from pursuing her claim.

Division II

THE DISTRICT COURT ERRED BY NOT CONSIDERING WHETHER THERE HAD BEEN SUBSTANTIAL COMPLIANCE WITH IOWA CODE SECTION 17A.19(3).

In its brief's error-preservation statement, Snap-On "disagreed that… [Askvig's] substantial compliance legal argument was preserved for error." (Snap-On brief, p. 14.) It did so as follows:

> Although Askvig presented her substantial compliance argument to the District Court, this argument was never ruled on and Askvig never requested reconsideration. In fact, Askvig admits this argument was never considered by the district court. (Askvig's… Brief, p. 17) stating, "[it did not consider the advocacy made on behalf of Askvig in her resistance's page 1-22]…. (*Id*., pp. 14-15, fn. del.)

Unfortunately, it now has to be admitted that this quoted sentence was poorly worded. It should have been worded more precisely something like the following: "The district court never gave any serious consideration the advocacy made on behalf of Askvig in her resistance's page[s] 1-22."

Patently, the district court must have considered this advocacy. Otherwise, it could not have declared that: "In the eyes of the court, the only meritorious argument was based on paragraph 33 of the Iowa Supreme Court's April 2, 2020 order… " (ruling, p. 1.)

Moreover, it is not the consideration of an issue which creates error preservation. It is the "decision by the district court" which creates error preservation:

> It is a fundamental doctrine of appellate review that issues must ordinarily be both raised and <u>decided</u> by the district court before we will decide them on appeal…. When a district court <u>fails</u> <u>to</u> <u>rule</u> <u>on</u> <u>an</u> <u>issue</u> properly raised by a party, the party who raised the issue must file a motion requesting a <u>ruling</u>

> in order to preserve for appeal. *Meier v. Seneaut III*, 64 N.W.2d 532, 537 (Iowa 2002), [*emph. supp.*].

Accordingly, because the district court "ruled" that the issues raised by Askvig were without merit, it thereby preserved this issue for appellate review.

Furthermore, in Snap-On's brief, its following contentions were inapplicable to Askvig's error preservation:

> In the Ruling, there is no mention of "substantial compliance" or the "pari materia" Iowa Code section 17A.19(2). (*See* Ruling). This was a "red flag that the court had not decided the issue" and yet Askvig failed to file a motion to raise the issue again for a decision. *See UE Local 839/IUP v. State*, 928 N.W.2d 51, 61 (Iowa 2019) (noting the lack of any mention in a district court order as to a particular issue will mean error is not preserved unless the issue is brought before the district court again before an appeal is filed). (Snap-On brief, p. 16… *fn. del*.)

These contentions were inapplicable because in full context, they referred to a party's failure to raise a certain issue, not a failure by the court to decide an issue never raised.

> Nevertheless, the State, in its subsequent motion for summary judgment, failed to cite rule 621-6.5(3) and did not argue the contract was invalid because the State did not vote to ratify it. In a footnote in the summary judgment ruling, the district court observed, "Under its motion to dismiss, the [S]tate makes no argument on summary judgment regarding the impact of regulations promulgated by PERB requiring the public employee "approve the ratified agreement before it is effective. This was a red flag that the court had not decided the issue. Yet the State failed to file a second or supplemental motion for summary judgment raising the agency rule. Nor did the State file a motion to amend or enlarge under Iowa Rule of Civil Procedure 1.904(2) or otherwise ask the district court to decide whether there was a valid collective bargaining agreement in light of rule 621-6.5(3). We conclude that the State failed to preserve errors on its rule 621.5(3) challenge to contract formation. *See, Meier*, 641 N.W.2d at 541 (holding

> defendant waived appellate review of issue not reached by the court when defendant failed to renew his request for a ruling on the issue). *UE Local v. State*, 928 N.W.2d 51, 61 (Iowa 2019).

In its brief's division II, pp. 17-21, Snap-On spent this space contending that substantial compliance with section 17A.19(3) was not a defense for missing this statutory deadline for filing a judicial review petition. It did, notwithstanding Askvig's acknowledgement that this was how this statute had been interpreted in the past.

Askvig's issue, however, was as a matter of first impression. It was because past statutory construction can be re-visited for its correctness and remedied if incorrect:

> We must enforce section 86.71(1) as it is plainly written. We failed to do so in *Miller* and *Wentz*; consequently, our misinterpretation of section 85.71(1) in those cases is clearly erroneous. Therefore, we have no alternative but to overrule them. *Young v. City of Des Moines*, 262 N.W.2d 612, 615 (Iowa 1978), *overruled on other grounds, Parks v. City of Marshalltown*, 440 N.W.2d 377, 379 (Iowa 1989) (stare decisis does not prevent us from reconsidering, repairing, correcting or abandoning past judicial announcements when error is manifest); *Kersten Co. v. Department of Social Servs.,*. 207 N.W.2d 117, 121 (Iowa 1973) (stare decisis "should not be invoked to maintain a clearly erroneous result"); *State v. Johnson*, 257 Iowa 1052, 1056, 135 N.W.2d 518, 521 (1965) (we have a duty to change erroneous past decisions); *Stuart v. Pilgrim*, 247 Iowa 709, 714, 74 N.W.2d 212, 216 (1956), (overruling established precedent that "proceed[ed] upon a wrong principle, [was] built upon a false premise, and arriv[ed] at an erroneous conclusion"); *accord People v. Anderson*, 742 P.2d 1306, 1331 (Cal.1987) (stare decisis does not shield court-created error from correction, especially where error is related to a matter of continuing concern to the community). As we noted in *Kersten*, "We should be as willing to correct our own mistakes as we are those of others." *Kersten*, 207 N.W.2d, at 131.

Henricksen v. Younglove Construction, 540 N.W.2d 254, 260-261 (Iowa 1995).

Before the district court, the issue raised was that the prior construction of section 17A.19(3) never had addressed the following relevant matters:

(5) From the line of cases interpreting and construing and section 17A.19(3), it is plain that the appellate courts have applied this statute very narrowly. It also is plain that they have done so mostly based upon the following oft-cited and quoted language:

> Except as expressly provided otherwise by another statute referring to this chapter by name, the judicial review provisions of this chapter shall be the exclusive means by which a person or party who is aggrieved or adversely affected by any agency action. (Iowa Code section 17A.19, unnumbered paragraph, sentence 1.)

(6) Despite relying mostly upon this sentence, it has not interpreted, construed, or harmonized this sentence with the two sentences which appear immediately thereafter, namely:

> However, **nothing** in this chapter shall abridge or deny to any person or party who is aggrieved or adversely affected by any agency action the **right** to seek relief from such action in the courts. Iowa Code section 17A.19, unnumbered paragraph, sentence 2, both bolding & underscores, (both bolding & underscores, *emph. supp*.).
>
> ****
>
> A person who or party who has exhausted all adequate remedies and who is aggrieved or adversely by any final agency action is entitled to judicial review thereof under this chapter. (Iowa Code section 17A.19(3), first sentence, both bolding & underscores, *emph. supp*.)

(7) These two sentences are important. They are because by their inclusion of the words "right" and "entitled", (unlike the first sentence of the unnumbered paragraph), they established ab initio that this court has subject matter jurisdiction over Askvig's "seeking" of judicial review. They also do because "[s]ubject matter jurisdiction 'ordinarily means the power to hear

and determine cases of the general class to which the proceedings in question belong, not merely the particular case then occupying the attention of the court. Cit…. '" *Wederath v. Bran*t, 287 N.W.2d 591, 594 (Iowa 1980).

(8) By comparison, the first sentence of the unnumbered paragraph of section 17A.19 only dictates the exclusivity of the "means" by which a "person or party who is aggravated or adversely affected by agency action may seek judicial review… " Yet, means" is undefined. Further, even in common parlance, this word has multiple definitions:

> **Means** (mēnz) ***pl. n***. [[< MEAN3, n.]] **1** [*with sing*. or pl. v.] that by which something is done or obtained; agency [the fastest means of travel] **2** resources or available wealth; often, specif., great wealth; riches [a person of *means*] – **by all means 1** without fail **2** of course; certainly – **by any means** in any way possible; at all; somehow – **by means** of by using; with the aid of; through – **by no (manner of) means** not at all; in no way – **means to an end** a method of getting or accomplishing what one wants. *Webster's New World College Dictionary*, 4th Ed., p. 891 (2010), [bolding in orig., underscores, *emph. supp*.].

(9) None of these definitions, however, give much guidance as to what this statutory word denotes in this statute's unnumbered paragraph. Resultantly, the word is ambiguous because the supreme court has indicated the following:

> A statute or rule "is ambiguous if reasonable minds could differ or be uncertain as to the meaning of the statute." *Carolan v. Hill*, 553 N.W.2d 882, 887 (Iowa 1996).
>
> Ambiguity may arise in two ways: (1) from the meaning of particular words; or (2) from the general scope and meaning of the statute. *Larson Manufacturing Company, Inc. v. Thorson*, 763 N.W.2d 842, 859 (Iowa 2009).

It is Askvig's position, therefore, that the first sentence in section 17A.19, unnumbered paragraph, has nothing to do with this court's jurisdiction of Askvig's judicial review proceeding. Rather, it has to do with whether agency action can be remedied by "means" not provided in the IAPA, such as by seeking an injunction, Kerr, *supra*, at 285-286, or by

seeking a declaratory judgement, *City of Des Moines v. Des Moines Police Bargaining Unit*, 360 N.W.2d 729, 730-732 (Iowa 1985).

(10) Additionally, beyond any issue of subject matter jurisdiction, there is the possibility of another type of jurisdiction being implicated in Askvig's judicial review proceeding. As described by the supreme court, this type of jurisdiction is:

> The issue here is not whether the district court lacked subject matter jurisdiction. Rather the issue is whether the court lacked authority to hear the two cases…
>
> Clearly, here, the district court had subject matter jurisdiction because Iowa Code section 601A.16(1) gave it such jurisdiction. Iowa Code § 601A.16(1) ("A complainant after the proper filing of a complaint with the commissioner, may subsequently commence an action for relief in the district court…").
>
> A court may have subject matter jurisdiction but for one reason or another may not be able to entertain the particular case. Sometimes we have referred to "lack of authority to hear the particular case" as lack of jurisdiction of the case. *See, e.g., City of Des Moines v. Des Moines Police Bargaining Unit*, 360 N.W.2d 729, 730 (Iowa 1985) ("The issue is technically not one of subject matter jurisdiction. A district court obviously has jurisdiction to entertain declaratory judgment actions. The issue is one of jurisdiction of the particular case. This is because a court lacks authority to entertain particular declaratory judgment suits in which its jurisdiction has not been properly invoked.").
>
> A statute, like chapter 601A, that creates a cause of action and establishes procedures for enforcing that action and establishes procedures for enforcing that action provides an excellent example of how a court may have subject matter jurisdiction, yet lack the authority to hear a particular case. Such a statute gives the district court subject matter jurisdiction over the type of action the statute creates. By following the statutory procedures a party properly invokes the authority of the court to hear the case. A party who ignores one or more of the procedures does not invoke such authority. *Cits*…. *Christie v. Rolscreen Co*., 448 N.W.2d 447, 450 (Iowa 1989).

****

The issue before us is whether Klinge's failure to file a request for mediation with the farm mediation service as required by section 654B.3 deprives the small claims court of subject matter jurisdiction….

Since *Christie*, we have been careful to distinguish between subject matter jurisdiction and a courts authority to hear a particular case. *Cits*…. In 2000 the legislature amended section 654B.3 by stating that the filing of a mediation request "are jurisdictional prerequisites to a person filing a civil action… to resolve a dispute subject to this chapter. *Cit*….

The timing of the amendment, the use of the federal courts term "jurisdictional perquisites," and the introductory statement to the bill indicate the legislature intended a different result than that… [in the federal court decision]….

We must conclude the legislature intended [that] obtaining a mediation release from the farm mediation service to be a perquisite to subject matter jurisdiction. Klinge's failure to file a mediation request and obtain a mediation release before filing his claim deprived the small claims court of subject matter jurisdiction. As a result, both the small claims court order and the district court's decision are void. *Klinge v. Bentine*, 725 N.W.2d 13, 15, 16, 17-18 (Iowa 2006), [*emph. supp*.].

(11) Hence, given that legislative intent is controlling with respect to the issues of lack of jurisdiction of the case, *Christie*, *supra*, the Iowa appellate courts apparently never have had to address a particular expression of legislative intent in section 17A.19(2)(3). They only have relied on the non-jurisdictional "exclusive means" sentence in the unnumbered paragraph of section 17A.19 and non-statutory words of their own ideas of potential intent. Yet, in section 17A.19(2)(3), the legislature expressed its intent in the following manner:

(a) "Within ten days after the filing of a petition for judicial review the petitioner shall serve by the means provided in the Iowa rules of civil procedure for the personal service of an original notice, or shall mail copies of the petition to all parties named in the petition and, if the petition involves review of agency action in the contested case, all parties of record

in that case b**efore the agency.** Such personal service or mailing shall be jurisdictional." Iowa Code section 17A.19(2), [both bolding & underscores, emph. supp.)]

(b) "If a party files an application under section 17A.16, subsection 2, for rehearing with the agency, the petition for judicial review must be filed within thirty days after that application has been denied or deem denied." Iowa Code section 17A.19(3). In this *pari materia* subsection, however, there is no statement that such filing was "jurisdictional."

(c) Consequently, the following statutory construction now should be applied for the first time to section 17A.19(3):

> In interpreting… [a statute we focus on] "what the legislature said." *Cit*…. Nevertheless, what the legislature did not say may be just as important as what the legislature did say. *Cit*. In this regard, we follow the rule that "legislative intent is expressed by omission as well as by inclusion." *Eaton v. Iowa Employment Appeal Board*, 602 N.W.2d 553, 556 (Iowa 1999), [*emph. supp.*]; *accord, Collins v. King*, 545 N.W.2d 310, 312 (Iowa 1996).
>
> ****
>
> In the field of statutory interpretation, legislative intent is expressed by omission as well as by inclusion. The express mention of certain conditions of entitlement implies the exclusion of others. *Barnes v. Iowa Department of Transportation*, 385 N.W.2d 260, 263 (Iowa 1986), [both bolding & underscores, *emph. supp*.]; *accord, e.g., Marcus v. Young*, 538 N.W.2d 288, 289 (Iowa 1985), ["In examining the statutes at hand, we are to be guided by the maxim 'expressio unius est exclusion alterius,' expression of one thing is the exclusion of another."]; *Callender v. Skiles*, 591 N.W.2d 182, 186 (Iowa 1999), [*emph. supp*.]. ["We have repeatedly recognized the express mention of one thing in a statute implies the exclusion of another. *Cit…*].

(12) In other words, Askvig's failure to file a "petition for judicial review… within thirty days after that [rehearing] application has been denied or deemed denied…."], does not make this court unable "to entertain the particular case of Askvig's judicial review or deprive this court's "authority to hear… [this] particular case… or "of jurisdiction of… [this] case…. " *Christie, supra,* at 450. Thus, this court should deny Snap-On's motion to dismiss.

(13) Assuming arguendo, however, that Askvig's failure to file her judicial review petition within the specified thirty days, section 17A.19(3) should not be applied as narrowly as it has been in the past. It should not be because the IAPA itself provides as follows that:

> Except as expressly provided otherwise by this chapter or by another statute referring to this chapter by name, the rights created and the requirements imposed by this chapter shall be in addition to those created or imposed by every other statute in existence on July 1, 1975, or enacted after that date….
>
> This chapter shall be construed broadly to effectuate its purposes. Iowa Code section 17A.23(1)(2), [*emph. supp*.]

In that regard, one of those "rights created" by the IAPA is the previously-quoted right that "a person or party who is aggrieved or adversely affected by agency action the right to seek relief from such action in the courts." Iowa Code section 17A.19, (unnumbered paragraph, first sentence, *emph. supp*.). Further, one of the "purposes of this chapter… [is] to simplify the process of judicial review of agency action, as well as to increase its ease and availability." Iowa Code section 17A.1(3).

Narrow statutory construction of this right and these purposes without considering why a judicial review petition was not filed within thirty days of a rehearing denial, however, "abridge or deny…. the right to seek relief from such [agency] action… [which aggrieves or adversely affects a person or party]. Section 17A.19, unnumbered paragraph, sentence 2. It also does not simplify the process of judicial review of agency action [or] "increase its ease and availability…. Section 17A.1(3).

(14) Indeed, with respect to the *pari materia* section 17A.19(2), (the statute which makes service of the petition within ten days of the petition's

filing "jurisdictional…" unlike section 17A.19(3), the supreme court did not make this ten-day service an absolute jurisdictional requirement:

> The procedures for seeking… [judicial] review are found in section 17A.19(2)….
>
> These procedures are jurisdictional. Thus, a failure to comply with them deprives the district court of appellate over the case. *Dawson v. Iowa Merit Employment Comm'n*, 303 N.W.2d 158, 160 (Iowa 1981) (personal service rather than mailing deprived district court of jurisdiction because mailing was only permissible method of service under the statute); accord, *Neumeister v. City Dev. Bd.*, 291 N.W.2d 11, 14 (Iowa 1980); *see also Record v. Iowa Merit Employment Dep't*, 285 N.W.2d 169, 172-73 (Iowa 1979) (failure to mail copy of petition to a part in the proceeding before the agency deprives district court of jurisdiction because statute required mailing to "all parties of record").
>
> Notwithstanding *Dawson, Neumeister, and Record*, we have consistently held that substantial – not literal – compliance with section 17A.19(2) is all that is necessary to invoke the jurisdiction of the district court.
>
> *See, e.g., Richards v. Iowa Dep't of Revenue*, 362 N.W.2d 486, 488-89 (service by party, notwithstanding prohibition of such service by Iowa Rule of Civil Procedure 52, is not a jurisdictional defect under the statute); *Buccholtz v. Iowa Dep't of Pub. Instruction*, 315 N.W.2d 789, 792-93 (Iowa 1982) (service on only one of three closely related agencies substantially complied with section 17A.19(4) requirement to name as a respondent the agency whose action is challenged, even though agency served did not render decision); *Green v. Iowa Dep't of Job Serv.*, 299 N.W.2d 651, 654 (Iowa 1980) (petition naming employer in exhibits attached to petition rather than in caption substantially complied with section 17A.19(4) requirement to name as a respondent the agency whose action is challenged).
>
> According to one court,
>
> "[s]ubstantial compliance" with a statute means actual compliance in respect to the substance essential to every reasonable objective of the statute. It means that a court should determine whether the statute has

been followed sufficiently so as to carry out the intent for which it was adopted. Substantial compliance with a statute is not shown unless it is made to appear that the purpose of the statute is shown to have been served. What constitutes substantial compliance with a statute is a matter depending on the facts of each particular case.

Smith v. State, 364 So.2d 1, 9 (Ala. Crim. App. 1978) (citation omitted); accord *Dorignac v. Louisiana State Racing Comm'n*, 436 So.2d 667, 669 (La. App. 1983). We essentially adopted this definition in *Superior/Ideal, Inc., v. Board of Review*, 419 N.W.2d 405, 407 (Iowa 1988).

The fighting issue here is whether mailing notice two days before judicial review proceedings are instituted is a jurisdictional defect or is in substantial compliance with section 17A.19(2). We think Brown substantially complied with the statute. We reach this conclusion for several reasons.

First, we construe the provisions of the administrative procedure act broadly to effectuate its purposes. *Frost*, 299 N.W.2d at 648; Iowa Code § 17A.23. One of those purposes is

> to simplify the process of judicial review of agency action as well as increase its ease and availability. In accomplishing its objectives, the intention of this chapter is to strike a fair balance between these purposes and the need for efficient, economical and effective governmental administration. *Cits*….
>
> In this case Deere makes no claim of prejudice because of the premature notice. Under these circumstances, our holding that Brown's notice substantially complied with section 17A.19(2) notice requirements serves to accomplish this laudable statutory purpose….

II. In summary, we hold that **in the absence of any showing of prejudice**, a two-day premature mailing of the petition substantially complies with the service requirements of section 17A.19(2). The district court erred in holding otherwise. Consequently, we reverse its ruling on the special appearance and remand this case to the district court for further proceedings consistent with this opinion. *Brown v. John Deere Waterloo*

Tractor Works, 423 N.W.2d 193, 194-196 (Iowa 1988), [both bolding & underscores, emph. supp., fn. del.].

****

The question presented in this appeal is whether Iowa Code section 17A.19(2)(2017), which imposes a jurisdictional requirement for the petitioner in an **action** for judicial review to timely mail a copy of the petition to attorneys for all the parties in the case, is satisfied when the attorney representing the petitioner timely *emails* a copy of the petition to opposing counsel….

The district court rejected Ortiz's argument that an email substantially complies with the mailing requirement of the statute. It based its holding primarily on the principle that a change in the statute can only come from the legislature. We agree the substantial-compliance doctrine under Iowa Code section 17A.19(2) cannot be applied to change the jurisdictional requirement. *Cit*. "[W]e have consistently held that substantial-not literal compliance with section 17A.19(2) is all that is necessary to invoke the jurisdiction of the district court…. Instead, **the doctrine permits leeway in meeting the requirements of the statute when the facts and circumstances indicate the purpose and meaning of the statute have been met**…. *Cit*…. **The purpose of the statute is to make judicial review simple and accessible by providing for an efficient and effective process**. *Id*….

(15) In *Brown* and *Ortiz*, the supreme court continued to reject literal compliance in favor of substantial compliance with section 17A.19(2) when it was demonstrated by the petitioner that any or all of the following factors contributed to the noncompliance:

(a) The respondent was not meaningfully prejudiced by the noncompliance;

(b) The respondent has "already been engaged in adversary proceedings within the agency and knows what the case is about…; "

(c) The facts and circumstances of the noncompliance showed an intention and/or attempt to comply with the statute;

(d) The "statute has been followed sufficiently so as to carry out the intent for which it was adopted…. " for example, to "initiate a further proceeding, appellate in nature, in litigations previously commenced before an agency…; "

(e) "[M]eeting the requirements of the statute when facts indicate the purpose and meaning of the statute have been met…. [such as] to make the judicial review simple and accessible by providing for an efficient and effective process…. "

(f) All these factors this would and should be equally applicable to substantial compliance with section 17A.19(3). (resistance, pp. 9-20.)

In its brief's division II, pp. 21-25, Snap-On spent this space continuing to contend that substantial compliance did not apply to section 17A.19(3). It was only on pp. 25-26 that it addressed what it perceived were the "many practical problems" of applying "the substantial compliance doctrine." The problem with its problems is that they are not realistic.

For example, in its statement of facts, Snap-On placed Askvig's section 17A.19(3) deadline for filing a judicial review on 4/15/20. Given that electronic filings have to be made in district court, Snap-On could have checked any time thereafter with the electronic filing system to see if a judicial review petition had been filed, rather than wait until 5/05/20 to send Askvig's attorney asking whether a judicial review petition had been filed.

As another example, once Askvig's judicial review petition had been filed on 5/18/20, Snap-On at least had 20 days to file a counterclaim against Askvig in

its answer. Iowa R. Civ. P. 1.241, 1.242, 1.244, 1.303(1), 1.403, 1.405(1). Accordingly, Snap-On would not have lost any opportunity to file a judicial review counterclaim in its answer.

In short, for substantial-compliance purposes, Snap-On did not show any prejudice to Snap-On by any "practical problems."

By:_____

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of this Appellant's Page Proof Copy of Reply Brief was electronically filed via EDMS and served on November 9th, 2020 upon the Clerk of the Iowa Supreme Court and the Respondents/Appellee's attorney of record.

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Legal Assistant to Mark Soldat