

IN THE SUPREME COURT OF IOWA
No. 22-0618

KIM SCHMETT and LEANNE PELLETT,
Appellees,

vs.

STATE OBJECTIONS PANEL,
Appellant,
ABBY FOR IOWA,
Intervenor–Appellant.

Appeal from the Iowa District Court for Polk County
Scott J. Beattie, District Judge

APPELLANT'S BRIEF

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ISSUE PRESENTED

- I. Iowa law prohibits counting a signature on a nominating petition if it's missing the signature of an eligible elector or a complete residential address. It also requires that objections to petitions must be sustained if this information is missing or incomplete. Does an eligible elector's signature count--and must an objection be sustained--if the signer didn't date the signature, as required by a *different* provision that is *not* incorporated into either the disqualification or objection provisions?

Iowa Code § 43.14

Iowa Code § 43.15

Iowa Code § 43.24(1)(a)

STATEMENT OF THE CASE

This is a judicial review proceeding filed by two Iowans who unsuccessfully objected to the nominating petition of Abby Finkenauer, a candidate seeking the Democratic nomination for the United States Senate. The objectors raised various challenges to many signatures on Finkenauer’s petition. And they argued that if their challenges were sustained, Finkenauer’s petition lacked the required 19 counties—each with at least 100 signatures—to qualify for the Democratic primary ballot.

The panel of state officials charged with hearing objections—often called the State Objections Panel—held a hearing and upheld some of their objections to individual signatures and dismissed others. But after counting the remaining valid signatures, the Panel found Finkenauer still had at least 100 signatures from each of 19 counties. So the Panel dismissed the objection.

Two days later, the Objectors filed this petition for judicial review. Pet. at 1. In their petition, they focused on a total of three signatures split between two counties. *See id.* ¶ 9. They argued that the signatures shouldn’t be counted because they were missing the date of signing. *See id.* ¶¶ 7–11. The Objectors also argued two of the state officials on the Panel—State Auditor Rob Sand and Attorney General Tom Miller—should have recused themselves from the Panel. *See id.* ¶¶ 12–20.

Finkenauer’s campaign committee, Abby for Iowa, successfully moved to intervene. Order on Pet. to Intervene by Abby for Iowa (Apr. 5, 2022). The district court held a hearing on the merits of the petition on April 6. It received expedited briefing over the next two days. And late on Sunday, April 10, the district court issued a ruling reversing the Panel because it concluded the three signatures with missing dates shouldn’t have been counted. And it thus ordered that Abby Finkenauer “shall not be included on the primary ballot for the Democratic Primary for U.S. Senate.” Dist. Ct. Ruling on Pet. for Judicial Review at 18.

The Panel filed a notice of appeal the next day. Finkenauer also appealed. And this Court ordered an expedited briefing schedule and oral argument.

STATEMENT OF THE FACTS

Abby Finkenauer is a candidate for the Democratic nomination for the United States Senate. To be listed on the Democratic primary ballot, she had to submit nominating papers to the State Commissioner of Elections that include 3,500 signatures of eligible electors. *See Iowa Code § 45.1(1).* And from those signatures, she needs to have representation from at least 19 counties with 100 signatures from each. *See id.* She did so. And her petitions were accepted by the State Commissioner. *See Dist. Ct. Ruling at 2–3.*

Two Iowans—Kim Schmett and Leanne Pellett—then objected to Finkenauer’s nominating papers under section 43.24 of the Iowa Code. *See Cert. Rec. 1–84; Dist. Ct. Ruling at 2–3.* The Objectors challenged signatures from across four counties for many reasons. *See Cert. Rec. at 6–10.* But ultimately, only three signatures from two counties remain in dispute here. *See Dist. Ct. Ruling at 4.*

One challenged signature was on line 2 of a page of signatures from Allamakee County:

Sign your name	Address where you live in Iowa:		Today's Date
	House number and street	City	
1. <i>Cheryl Allen</i>	1028 W Main St	Waukon	2-10-22
2. <i>Leanne Pellett</i>	240 16th Avenue	Waukon, 52171	
3. <i>Jeff Finkenauer</i>	202 E Main St	Iowa Falls, 50126	5-11-22

Cert. Rec. 42.

And two others were on pages with signatures from Cedar County—line 1 of this page:

Sign your name	Address where you live in Iowa:		Today's Date
	House number and street	City	
1. <i>Louis and Paul</i>	126 W Dowey	WB	6-6-22
2. <i>Judith Catheren</i>	1996 Delta	West Branch	2-10-2022
3.			

Cert. Rec. 49. And line 12 of this page:

11. <i>Dan Langan</i>	1105 Central St	Tipton	2-7-22
12. <i>Donna Albrecht</i>	1310 N. Ave	Tipton	
13. <i>Jeff Johnson</i>	1710 North 2nd	Tipton	2-7-22

Cert. Rec. 53.

The Objectors argued that because these three signature lines lacked the date of signing as required by section 43.15(2), they shouldn't be counted. *See* Cert. Rec. at 6, 7. And if the signatures aren't counted, Finkenauer only had only 17 counties with at least 100 signatures and failed to meet the requirements to be listed on the primary ballot. *See* Cert. Rec. at 10; Dist. Ct. Ruling at 18.

A panel of three State officials—the Secretary of State, Auditor of State, and Attorney General—has the duty to hear objections to nominating petitions submitted to the State Commissioner. *See* Iowa Code § 43.24(3)(a). The Objectors moved to recuse two of the officials: Auditor of State Rob Sand and Attorney General Tom Miller. *See* Cert. Rec. 96–101. They argued that Auditor Sand had bias against their attorney because of comments one of his employees made to the press about an unrelated lawsuit the attorney

filed against Auditor Sand. *See* Cert. Rec. 4–5. And they contended that Attorney General Miller was biased because his own nominating petition had been unsuccessfully challenged with similar legal arguments earlier in the day. *See* Cert. Rec. 3.

Though section 43.24(3)(a) only requires recusal when the Panel is considering a challenge to the officer’s own nominating papers—and that statute provides for an alternative Panel member only in that situation—the Objectors argued that the recusal rule and substitute appointment process for contested cases should apply. *See* Cert. Rec. 97, 100–01 (citing Iowa Code § 17A.11).

The State Objections Panel promptly held a hearing on the Objectors’ challenges. Both Auditor Sand and Attorney General Miller declined to recuse. Auditor Sand explained that he harbored no personal animus towards the Objectors’ attorney. *See* Cert. Rec. 117–18. Attorney General Miller explained that he a statutory duty to serve on the panel, that the challenge to his petition had been resolved, and that he would follow panel precedent regardless. Cert. Rec. 118.

Finkenauer argued to the Panel—though not in her written submission, *see* Cert. Rec. 102–15—that the Objectors lacked standing to file an objection under section 43.24(a) because they were not currently registered Democrats. *See* Finkenauer’s Memo. of Auths. in Supp. of Aff’g the Panel Decision at 4 & n.2 (Apr. 6, 2022). The

panel rejected the argument at hearing concluding that the statutory language was broad enough to cover any eligible voter who could chose to exercise their right—even on primary election day—to register as a Democrat and vote in the primary for the candidates for United States Senate. *See* Iowa Code § 48A.7A. But the Panel’s ruling did not issue a written ruling addressing this argument and it was thus implicitly denied there as well. *See* Cert. Rec. 116–25.

The panel then considered each of the Objectors’ challenges to the signatures on Finkenauer’s nominating petition. It sustained some of the challenges. *See* Cert. Rec. 118 (sustaining three objections to duplicate signatures in Allamakee County); *id.* 121 (sustaining objections to a duplicate signature and one with an address outside the Cedar County); *id.* at 122 (sustaining objection to a page of signatures missing Finkenauer’s county of residence). But it dismissed others, including the objections to three signatures with missing dates of signing from Allamakee and Cedar counties. *See* Cert. Rec. 118–22.

Two panel members agreed that “a missing, illegible, or incorrect date is not an enumerated ground for a signature not to be counted in § 43.14.” Cert. Rec. 121. They also reasoned that recent amendments to the statute mandating stricter compliance did not affect the date requirements in section 43.15. *See* Cert. Rec. at 120. And they relied on prior panel precedent that dismissed challenges

based on missing dates when the date could be determined by the surrounding dates on the nominating petition as substantially complying with the date requirement. *See* Cert. Rec. 118–20.

The Secretary of State disagreed. He contended that because section 43.15 requires “the date of signing,” and the Legislature hasn’t removed that requirement, the Panel shouldn’t count a signature missing the date. Cert. Rec. 120. He also explained his view that the Legislature’s recent amendment to the statute requiring the sustaining of objections in some cases “is a signal to the Panel that more than ‘substantial compliance’ is expected of candidates.”

Id. He thus voted to sustain the objections. *See* Cert. Rec. 121.

But because a majority of the Panel voted to dismiss the objections to the three signatures, Finkenauer’s petition contained at least 100 signatures from both Allamakee and Cedar Counties. And with her other valid signatures, she had at least 100 signatures from 19 or more counties as required by section 45.1 of the Iowa Code. A majority of the Panel thus voted to dismiss the objection to her petition and include her on the Democratic primary ballot. Eventually the Panel majority also issued a written decision memorializing its ruling. *See* Cert. Rec. 116–126.¹

¹ The Secretary of State voted to sustain the objection and did not join the written ruling. Cert. Rec. 125–26.

The objectors then filed this judicial review proceeding under chapter 17A in the district court. *See* Pet. at 1. They focused on a total of three signatures split between two counties. *See id.* ¶ 9. They argued that the signatures shouldn't be counted because they were missing the date of signing. *See id.* ¶¶ 7–11. The Objectors also again argued that Auditor Sand and Attorney General Miller should have recused themselves. *See id.* ¶¶ 12–20.

Finkenauer's campaign committee, Abby for Iowa, successfully moved to intervene. Order on Pet. to Intervene by Abby for Iowa (Apr. 5, 2022). Both the Panel and Finkenauer argued that the Panel properly counted the challenged signatures because sections 43.14(2)(c) and 43.24(1)(a) don't require disqualification of the signatures. *See* Dist. Ct. Ruling at 16 (discussing arguments). They also contended that the three signatures did substantially comply with the requirements. *See id.* at 12. And Finkenauer again argued that the Objectors lacked standing to file an objection under section 43.24(1)(a) because they were not registered Democrats. *See* Finkenauer's Memo. of Auths. in Supp. of Aff'g the Panel Decision at 4–6 (Apr. 6, 2022).

The district court agreed that neither Auditor Sand nor Attorney General Miller were required to recuse themselves. Dist. Ct. Ruling at 10–11. But it rejected the Panel's and Finkenauer's arguments that the Panel properly counted the three signatures with

missing dates. *Id.* at 12–17. It also rejected Finkenauer’s argument that the Objectors lacked standing to file an objection. *Id.* at 8–10. The court thus reversed the Panel and ordered that Abby Finkenauer “shall not be included on the primary ballot for the Democratic Primary for U.S. Senate.” Dist. Ct. Ruling at 18.

This expedited appeal followed. Under section 53.40(2) of the Iowa Code, ballots must be sent to certain voters 45 days before the primary election, which is Saturday, April 23, 2022. To comply with this deadline, the ballots must be finalized for printing by various vendors by 11:59 p.m. on Monday, April 18, 2022, so that they may be processed first thing on Tuesday, April 19, 2022.

Given the exceptional importance of the issues in this case—whether a candidate for the United States Senate may appear on the primary ballot and whether eligible Iowa electors who have signed nominating petitions can have their signature counted—the Panel is grateful for the expedited briefing and submission ordered by the Court on its own motion. To ensure that these questions can be decided by the Court—and the State complies with its statutory obligations to mail ballots—the Panel respectfully requests that the Court issue a decision on or before April 18.

ARGUMENT

I. Iowa law does not require the State Objection Panel to sustain an objection challenging the adequacy of “the date of signing” for an otherwise valid signature on a candidate’s nominating petition.

The district court reversed the decision of the State Objections Panel and ordered Abby Finkenauer removed from the Democratic primary ballot because three signatures lacked the date of signing. *See* Dist. Ct. Ruling at 4, 12–17. Because section 43.15 of the Iowa Code requires a petition signer to add that date, the district court reasoned that a signature missing the date couldn’t be counted. *See id.* at 17. But that’s not what the Iowa Code says.

A different provision—section 43.14(2)—spells out when a signature or page of signatures can be counted. *See* Iowa Code § 43.14(2)(a)–(d). And *that* provision—which actually governs the counting of signatures—doesn’t require disqualification of a signature because of a missing date. Indeed, when the Legislature recently *twice* amended the statute to ensure stricter compliance for some requirements, it didn’t touch the date requirement.

Because a missing date isn’t a basis to disqualify a signature, the Panel properly counted the challenged signatures under any standard of compliance. Exercising de novo review of the district court, *see Brakke v. Iowa Dep’t of Natural Res.*, 897 N.W.2d 522, 530 (Iowa 2017), this Court should reverse the court’s contrary decision.

A. A signature missing a “date of signing” must still be counted under section 43.14(2)(c).

The district court focused its analysis on section 43.15 of the Iowa Code. *See Ruling* at 12–17. To be sure, that section includes a requirement that “[e]ach signer” of nomination petitions “shall add the signer’s residential address, with street and number, if any, *and the date of signing.*” Iowa Code § 43.15(2) (emphasis added). The section also includes many other requirements and clarifications—big and small—to “be observed in the signing and preparation” of petitions. For example, it clarifies that someone can sign petitions for multiple candidates for the same office. *See Iowa Code* § 43.15(1). It also *requires* that petitions containing multiple pages “shall be neatly arranged.” *Id.* § 43.15(4). And that they must be “securely fastened together before filing.” *Id.* But section 43.15 doesn’t say what happens if one of its requirements—whether the date or the neat arrangement of papers—isn’t met. *See Iowa Code* § 43.15.

To find that answer, one must look to a different provision: section 43.14(2). This section spells out clearly when signatures can and cannot be counted. It explains when an entire page of signatures can be counted—only when *all* of the listed required information is printed at the top of the page. *See Iowa Code* § 43.14(2)(a)–(b). And it explicitly addresses when an individual

“signature line” can be counted. “A signature line shall not be counted if the line lacks the signature of the eligible elector and the signer’s residential address, with street and number, if any, and city.” Iowa Code § 43.14(2)(c). The section goes on to clarify the address requirement. *See id.* And it says that information “crossed out or redacted” doesn’t count. *See id.* at 43.14(2)(d).

But notably absent from the itemized list of disqualifying reasons for counting a signature is the “date of signing” required by section 43.15. (So too are that section’s neat arrangement and secure fastening requirements missing.) *See Iowa Code § 43.14.* Indeed, the only mention of a date in section 43.14 is the requirement that the top of every petition page include “[t]he date of the primary election for which the candidate is nominated.” Iowa Code § 43.14(1)(f).

Because the “date of signing” is not included as a basis for not counting a signature in section 43.14(2), the statute doesn’t give the Panel—or the judiciary—the authority to disqualify a signature that omits the signing date. Given the detailed itemization of signature lines that can’t be counted, it is proper to interpret this omission as implying that the signatures with missing dates *should* be counted. *See State v. Hall*, 969 N.W.2d 299, 309 (Iowa 2022) (“Meaning is expressed by omission as well as by inclusion, and the express

mention of one thing implies the exclusion of others not so mentioned.”); Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* § 10 (2012) (“The expression of one thing implies the exclusion of others.”). If the Legislature had intended to prevent counting of such signatures, it could have easily added such a requirement. And as discussed below in Part B, despite making many additions, the Legislature hasn’t. This Court shouldn’t do what the Legislature has chosen not to.

While acknowledging “[t]his is a valid argument,” the district court rejected it because it would render the date requirement in section 43.15(2) “ineffective.” Ruling at 16. The court reasoned that this violates the general presumption that an “[i]n enacting a statute . . . [t]he entire statute is intended to be effective.” Iowa Code § 4.4(2). But the court’s concern is misplaced. The Legislature can choose to adopt requirements but only provide the extraordinary remedy of disqualifying the signature in certain instances. *Cf. Taylor v. Dept’ of Transp.*, 260 N.W.2d 521, 522–23 (Iowa 1977) (discussing the distinction between mandatory and directory statutes).

Reading section 43.14(2)—which textually addresses signatures counting—to be the governing standard for signature counting doesn’t read section 43.15 out of the Code. Signers still need to do it—their failure to do so just doesn’t result in disqualification.

And rather than give meaning to both statutes, the court’s interpretation fails to give the proper meaning to the carefully defined terms of section 43.14(2). It ignores the Legislature’s choice to make some requirements disqualifying and others—like the signing date and neat arrangement of papers—not. It is error.

B. The Legislature’s recent amendments ensuring stricter compliance with some requirements of chapter 43 didn’t address a signature missing a “date of signing” and support continued application of the Panel’s past precedent.

The Legislature has twice recently amended chapter 43 to ensure stricter compliance with some of the chapter’s requirements. *See* Act of May 16, 2019, ch. 148, §§ 10–12, 2019 Iowa Acts 505, 507 (codified at Iowa Code § 43.14); Act of June 8, 2021, ch. 147, § 9, 2021 Iowa Acts 371, 372 (codified at Iowa Code § 43.24(1)(a)). Because neither of these amendments touched on the date requirement in section 43.15, they do not require disqualifying signatures because of a missing date. And indeed, by declining to strengthen any date compliance, they imply that the Panel is correct to continue interpreting the chapter to not require disqualification based on missing dates.

About three years ago, the Legislature amended the language governing the county of signatures in section 43.14(2). *See* Act of May 16, 2019, ch. 148, §§ 10–12, 2019 Iowa Acts 505, 507 (codified

at Iowa Code § 43.14). It clarified that the address must be a “residential” address and must include “street and number.” *Id.* § 11. It added language providing that a signature line “shall not be counted” if “an eligible elector supplies only a partial address or a post office box address.” *Id.* It explicitly provided that required information “crossed out or redacted” “shall not be counted.” *Id.* And it added a cross-reference to another statute governing information required by candidate affidavits to make clear the lack of that information requires rejection of the affidavit. *See id.* § 12. Yet despite all these added clarifications and provisions about what signatures “shall not be counted,” the Legislature didn’t add any language saying a signature missing the signing date must not be counted. *See id.* § 10–12; *see also* Iowa Code § 43.14(2).

And just last session, the Legislature amended section 43.24 governing consideration of objections by the Panel. *See* Act of June 8, 2021, ch. 147, § 9, 2021 Iowa Acts 371, 372 (codified at Iowa Code § 43.24(1)(a)). It added the following mandate on the Panel: “Objections relating to incorrect or incomplete information for information that is required under section 43.14 or 43.18 shall be sustained.” *Id.*; *see also* Iowa Code § 43.24(1)(a). This strict compliance mandate does not apply to section 43.15, which contains the date-of-signing requirement. *See* Iowa Code §§ 43.24(1)(a), 43.15(2). And

the two referenced sections do not contain any date-of-signing requirement for petitioners. *See Iowa Code §§ 43.14* (containing the limited counting requirements already discussed), *43.18* (containing only requirements for the candidate's affidavit of candidacy). When the Legislature expresses an added strict compliance requirement for two sections, but not the third, the best interpretation is that the third is excluded from that requirement. *See State v. Hall*, 969 N.W.2d 299, 309 (Iowa 2022); Scalia & Garner, *Reading Law: The Interpretation of Legal Texts* § 10 (2012).

And properly so. Recall the neat-arrangement and secure-fastening requirements in section 43.15? If the Legislature *had* included section 43.15 in the list of sections subject to strict compliance, failure to follow those requirements would also keep an otherwise qualified candidate from a primary ballot. That wouldn't make any sense. True, a missing date is a bit more manageable of a standard to apply strictly. But it is reasonable for the Legislature to have concluded that a missing date isn't a defect significant enough to warrant failing to count an elector's signature and keeping a candidate from the primary ballot.

This interpretation also matches the Panel's past precedent. For example, in the challenge to the nominating petition of Jon Dvorak in 1988, the panel declined to strike signatures that had missing or incomplete signatures. The Panel reasoned, “[I]n most cases

the date can be determined from the dates affixed by preceding and subsequent signers.” *In re Nominating Petition of Jon E. Dvorak, Democratic Candidate for U.S. Representative in the Fifth Dist.* (1988). Here, too, the Panel found that the dates could be inferred by the surrounding dates on the petition. *See* Cert. Rec. 119, 121. And the Panel thus reasoned that the signature substantially complied with the date standard. This was a proper application of the statute and the Panel’s precedents. But ultimately, there’s no need to decide whether the proper standard for requirements in section 43.15 is substantial compliance—because that section isn’t a proper basis for disqualifying signatures at all.

CONCLUSION

The Iowa Constitution grants eligible electors the “right to vote” and other privileges. Iowa Const. art. II, § 1. And our statutes, including Chapter 43, elaborate on those rights to provide the right to sign petitions for candidates for public office and to vote in party primaries. This case implicates these important rights. And while it can be answered as a strictly textual matter, this Court should not forget these interests. And if there is any doubt, the Court should err on the side of interpreting this statutory scheme in a way that protects these rights of our Constitution and statutes.

The Panel properly dismissed the objections to Abby Finkenauer's nominating petitions. And the three challenged signatures with missing dates should be counted under a proper interpretation of chapter 43. The district court's decision should be reversed.

Respectfully submitted,

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CERTIFICATE OF COST

No costs were incurred to print or duplicate paper copies of this brief because the brief is only being filed electronically.

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CERTIFICATE OF COMPLIANCE

This brief complies with the typeface requirements and type-volume limitation of Iowa R. App. P. 6.903(1)(d) and 6.903(1)(g)(1) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Century Schoolbook font and contains 3,698 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

/s/ Samuel P. Langholz
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CERTIFICATE OF FILING AND SERVICE

I certify that on April 12, 2022, this brief was electronically filed with the Clerk of Court and served on all counsel of record to this appeal using EDMS.

/s/ Samuel P. Langholz
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