NO. 21-0999
Polk County No. CVCV060495

IN THE
SUPREME COURT OF IOWA

SAVE OUR STADIUMS, DANIEL PARDOCK, TAMARA ROOD, DANIEL TWELMEYER, AND KATIE PILCHER,
Plaintiffs - Appellants,

v.

DES MOINES INDEPENDENT COMMUNITY SCHOOL DISTRICT, KYRSTIN DELAGARDELLE, HEATHER ANDERSON, ROB BARRON, DWANA BRADLEY, TEREE CALDWELL-JOHNSON, KALYN CODY, AND KELLI SOYER,
Defendants - Appellees.

ON APPEAL FROM THE IOWA DISTRICT COURT
FOR POLK COUNTY
JEFFREY FERRELL, DISTRICT COURT JUDGE

FINAL REPLY BRIEF FOR APPELLANTS

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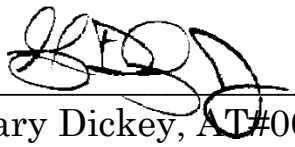
PROOF OF SERVICE & CERTIFICATE OF FILING

On March 11, 2022, I served this brief on all other parties by EDMS to their respective counsel, and I emailed a copy of this brief to appellants.

I further certify that I did file this brief with the Clerk of the Iowa Supreme Court by EDMS on March 11, 2022.



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REPLY ARGUMENT

Save our Stadiums submitted a referendum petition with 7,120 signatures. (App. at 203). There really is no dispute that the petition contains enough signatures to require a referendum if the statute counts only "voters" who actually cast votes in the 2019 "election of school officials." Iowa Code § 423F.4(2)(b). Because the statute is clear, judicial inquiry should stop where it begins—with the text. Uncomfortable with this result, the District attempts to count voters who cast votes in the 2019 city council races but did not cast votes for the "election of school officials." This construction is foreclosed by the plain language, purpose, and history of section 423F.4(2)(b).

But, the Court need not even reach the statutory interpretation issue because the District failed to follow the process set forth in Iowa Code section 277.7 for rejecting a referendum petition on the basis of insufficient signatures. The operation of the statute is binary. Either the school board accepts a petition for filing, or it must return it to the petitioners if "it lacks the required number of signatures." Iowa Code § 277.7(1).

Admittedly, "District officials failed to return the petition to the Plaintiffs." (District Br. at 37). By operation of law the petition was "valid unless written objections [were] filed." *Id.* § 277.7(2).

The district nonetheless insists that it "substantially complied with Iowa Code section 277.7(1)." (District Br. at 37). It is one thing to ask the Court to look the other way when there has been "substantial compliance" with a statute. Here, the District ignored the requirements of section 277.7(2) altogether. No rule of statutory construction allows a Court to pretend that a statutory mandate does not exist when it obviously does. Accordingly, this Court should reverse.

I. THE REFERENDUM PROVISION IN IOWA CODE SECTION 423F.4(2)(b) IS DETERMINED BY THE NUMBER OF VOTERS AT THE LAST PRECEDING ELECTION OF SCHOOL OFFICIALS

Analysis

A. The District's signature threshold determination incorrectly includes voters who cast votes in city elections but not in the election of school officials

The flaw in the District's analysis of Iowa Code section 423F.4 takes center stage on page 24 of its brief:

> [T]he District's position is that all individuals who

> voted at the 2019 Regular City and School Election should be counted as Iowa Code section 423F.4(2)(*b*) clearly provides.

(District Br. at 24). That is incorrect. The plain text of section 423F.4(2)(*b*) requires the District to count only "number of voters at the last preceding *election of school officials* under section 277.1." Iowa Code § 423F.4(2)(b) (emphasis added). Counting people who voted in the election of city officials but not in the "election of school officials"—as the District did—misreads the controlling language of section 423F.4(2)(b). The 2019 Des Moines mayoral and city council races were not part of the "election of school official" nor were they conducted "under section 277.1." *See id.* 277.1 (setting election dates for school elections).[1]

B. The Iowa General Assembly did not combine city and school elections into a single, unified election

Implicitly recognizing the glaring problem with the statute's

[1] The District and lower court construe the statute as if it states: "thirty percent of the number voters at the last preceding [combined] election of school officials [and city officials] under section 277.1 [and section 376.1]." Undoubtedly, the legislature did not intend that construction or else it would have written the statute differently. This Court should not rewrite section 423F.4 by judicial fiat. *See Anderson v. State*, 801 N.W.2d 1 (Iowa 2011) ("It is our duty to accept the law as the body enacts it").

text, the District's workaround is to equate the "*last preceding election of school officials*" as being the same as the "*Regular City & School Election*." (District Br. at 19, 21, 22). This false equivalency relies on a heavy dose of legislative historical revisionism. Prior to 2017, school elections have been held in September, and city elections have been held in November. House File 566 (2017); (App. at 146). In 2017, the General Assembly passed House File 566, which changed "the date of the election of school district directors" and provided for the "combined administration of regular and special school and city elections." House File 566 at Div. III (2017) (05/11/2017 Ltr. Branstad to Pate) *available at* https://www.legis.iowa.gov/legislation/BillBook?ga=87&ba=HF%20566. Specifically, the legislation synchronized the dates of the two elections and specified the order in which the offices shall appear on the ballot. *Id.* It did nothing more. In all substantive respects, city and school elections remain entirely separate and

distinct following the passage of HF566.[2] School elections remain governed by Chapter 277 of the Iowa Code, and city elections remain governed by Chapter 376 of the Iowa Code. Once this reality is accepted, the District's interpretation unravels from the thread of the misleading legislative history from which it was spun. Stated simply, an individual who obtained a ballot and marked it for the mayoral race in the city election but not for any of the school director races is not a "voter" in "the last preceding election of school officials under section 277.1." Iowa Code § 423F.4(2)(b).

C. The General Assembly purposefully chose to limit qualifying signatures to voters in the preceding "election of school officials"

The General Assembly's decision to link the referendum signature requirement in section 423F.4(2)(b) to the "election of school officials" was neither accidental, nor was it inconsequential.

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[2] Notably, the District's repeated reference to the "combined Regular City & School Election" is sophistry of the highest order. The phrase does not appear in the Iowa Code. Instead, it is simply the label that the Polk County Board of Supervisors gave the 2019 election in the certified abstract of votes. (App. at 524). It carries with it no legal significance.

Our legislature clearly knows how to draft a signature requirement that counts every voter who casts a ballot in a general election. *See* Iowa Code § 336.19(2)(b) ("number of electors voting at the last general election"). It is also well-versed in tying a signature requirement to a narrower universe of voters. Some statutes, for example, count only persons who voted for the president or governor in the preceding general election in the signature requirement. *See id.* §§ 28A.5, 49.10, 331.232(1), 331.244(2), 331.256, 331.262(9)(b), 331.306(1), 331.441(2)(b)(7), 331.461(2)(d), 336.2(2)(a), 336.18(2)(a), 347.23, 347.23A(2). Other statutes count only persons who voted at the "last regular city election." *See id.* §§ 331.232(2), 331.247(6), 362.4, 372.2(1). Still, others use the number of "voters at the last preceding regular school election." *Id.* §§ 257.18, 275.23A(2), 279.6(1)(b)(3), 300.2, 301.24. At least one statute counts only "the total number of votes cast upon the public measure." *Id.* § 50.49. As relevant to this appeal, one other statute mirrors the language of section 423F.4(2)(b) to count only those voting "at the last election of school officials." *Id.* § 296.2. Consequently, if the legislature had

intended to count individuals who voted in either the city election or the school board election, surely it would have used different language. The District's position essentially rewrites the statute to omit "*school officials*" from the statute to broaden the universe of voters the legislature chose to limit. The Court should instead give the statute its plain meaning.

D. Save our Stadiums' construction provides a workable application of the statute that is consistent with the plain language and purpose of section 423F.4(2)(b)

Save our Stadiums' construction presents the Court with the only workable application of section 423F.4(2)(b) that is consistent with its text, purpose, and legislative history. To correctly apply the signature requirement in section 423F.4(2)(b), the Court should consider only to contests involving "school officials," which are school board director races. Iowa Code § 423F.4(2)(b). Correspondingly, city council races and public measures should not be considered.[3] In 2019, the District had four director races on

[3] The legislature's choice to limit the signature requirement to voters in the preceding "election of school officials" can only mean that it did not intend to count votes cast for a public measure. Otherwise, the legislature surely would have included "public measure" in the signature requirements as it did in Iowa

the ballot (three district races and one at-large race). (App. at 212-213). Because every eligible elector in the district was able to cast a ballot in the at-large race, all voters who participated in the at-large race should count toward the signature requirement. To the extent that the county commissioner of elections can identify individuals who cast votes in a district race, but not in the at-large race, those undervotes also should be added to the signature requirement.[4] For example, if in Des Moines Precinct 15, there were 150 people who cast votes in the District 1 director race but only 100 voters in the at-large race, the 50 undervotes should be included in the signature requirement threshold. This construction of section 423F.4(2)(b) correctly counts "the number of voters at the last preceding election of school officials under section 277.1." *Id.* It is also consistent with the purpose of the statute, which "is to give voters an avenue to regulate" their

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Code section 50.49 (setting forth the required number of signatures to trigger a recount for any public measure).

[4] "Undervote" means to vote for fewer than permitted number of choices for any office or question on a ballot. Iowa Admin. Code r. 721-22.101(52).

school district. *Young v. Iowa City Cmty. Sch. Dist.*, 934 N.W.2d 595, 607 (Iowa 2019). And, it tracks with the legislative history evincing the General Assembly's desire to provide public oversight of the expenditure of SAVE revenues. *See* 2019 Iowa Acts, ch 166 §§ 12-17.

E. The decision in *Piuser v. Sioux City* does not support the District's construction

The District's extended detour into the decision *Piuser v. Sioux City*, 220 Iowa 308, 262 N.W. 551 (1935), is puzzling because it is not the silver bullet it has been portrayed to be. To the contrary, *Piuser* spotlights the District's error. At issue in *Piuser* was a petition asking the city council to call an election for the purpose of voting on general bonds for public improvements. *Id.* at 209, 262 N.W. at 552. The applicable statute allowed for a referendum upon filing a petition "signed by qualified electors of the city or town equal in number to twenty-five per cent of those who voted *at the last regular municipal election*." *Id.* at 310, 262 N.W. at 553 (emphasis added) (citing Iowa Code ch. 219 § 6242 (1931)). In contrast, the statute in this case considers only

electors from the more narrowly defined universe "of voters at the last preceding election of school officials under section 277.1":

Piuser v. Sioux City, Iowa Code ch. 219 § 6242(1)	For any of the purposes mentioned in subsections 1, 4, and 7 of section 6239, the petitions shall be signed by qualified electors of the city or town equal in number to twenty-five per cent of ***those who voted at the last regular municipal election.***
Save Our Stadiums et al v. DICSD et al, Iowa Code § 423F.4(2)(*b*)	The petition must be signed by eligible electors equal in number to not less than one hundred or thirty percent of the ***number of voters at the last preceding election of school officials under section 277.1***, whichever is greater.

Rather than support Defendant's statutory interpretation, *Piuser* undermines it. If the General Assembly intended the signature requirement section 423F.4(2)(*b*) to count voters from "the last regular municipal election," surely it would have said so. *Chiodo v. Shultz*, 846 N.W.2d 845, 853 (Iowa 2014) ("if our founders intended the infamous crimes clause to mean all felony crimes, we

must presume they would have used the word 'felony' instead of the phrase 'infamous crime'"). The fact that the General Assembly used the "last preceding election of school officials" must mean that it intended something different than "last regular municipal election" in *Piuser*. Thus, if *Piuser* tells us anything, it is that the General Assembly must have intended the threshold in section 423F.4(2)(*b*) to be drawn from the narrower universe of voters who participated in the *election of school officials*; not in the city council races or public measures.

II. THE DISTRICT DID NOT FOLLOW THE PROCESS SET FORTH IN IOWA CODE SECTION 277.7 FOR REJECTING A REFERENDUM PETITION ON THE BASIS THAT IT LACKS SUFFICIENT SIGNATURES

Under Iowa Code section 277.7, the process for requesting the school board hold a referendum on a public measure is binary. The petition must be "examined *before it is accepted for filing*" after which the school board must either: (1) return the referendum petition if "it lacks the required number of signatures;" (2) or it "shall be accepted for filing." Iowa Code § 277.7. Defendants jump right over this unambiguous text to suggest that it allows the school board a third option—to delay

examination of a petition, rejected it for insufficient signatures, and not return it. The District's argument is borderline frivolous and foreclosed by the statute's plain text as well as the *Young* decision.

In *Young*, a group of plaintiffs submitted a petition for referendum seeking a vote on the Iowa City Community School District's proposed demolition of an elementary school. *Young*, 934 N.W.2d at 597. In the district court, the Iowa City School District argued that although it received the plaintiffs' petition, it had not filed it because the school board had not taken action on it. (App. at 393-396). The court rejected the school district's attempt to distinguish receipt from filing, concluding that "the petition was 'filed' on the date it was received by Board Treasurer Leslie Finger, on behalf of Craig Hanse, Board Secretary." (App. at 395-396)(citing Iowa Code sections 277.4 and 277.7). The court further noted that the Iowa City School District had not filed any objection to the referendum petition pursuant to Iowa Code section 277.7. (App. at 396-397). Accordingly, the court held that

the school district had waived any challenge to the timing and adequacy of the plaintiffs' referendum petition. (App. at 397).

On appeal, the Iowa Supreme Court let stand the district court's finding that the petition had been properly accepted and filed. *Young*, 934 N.W.2d at 607. The court reversed, however, because the statute at issue (Iowa Code section 278.2) specifically allowed the school district authority to deny the referendum petition if the subject of the request was not "authorized by law." *Id.* at 608-609. In arriving its conclusion, the court contrasted section 278.2 with the referendum provision in *Berent v. City of Iowa City*, 738 N.W.2d 193, 197-201 (Iowa 2007). In *Berent*, the Court considered the right to seek a referendum on the amendment of the city charter under Iowa Code section 372.11(3). *Id.* at 199-200. Under that code section, "the city council 'must' submit the proposed amendment to the voters" if the referendum petition is "valid." *Id.* at 200. A petition is valid under section 371.11(3) if it contains the minimum of signatures from residents. *Id.* The only means to contest the validity of a petition under that section is to file an objection, which is determined by a three-

person review committee that includes the mayor, the city clerk, and a member of the city council. *Id.* at 197 (citing Iowa Code section 44.8). Challenges to the substance of the referendum's request must be launched by a declaratory judgment action. *Id.* at 213.

Save our Stadiums' construction falls squarely in line with the result in *Berent*. Like the statutory framework at issue in that case, section 423F.4(2)(b) provides that a school district "*shall* . . . direct the county commissioner of elections to submit the question of the resolution to the registered voters of the school district" upon receipt of a petition containing the required number of signatures. Iowa Code § 423F.4(2)(b) (emphasis added). Because the District's designated agent did not return the petition for insufficient signatures, it was accepted for filing according to section 277.7. *Id.* § 277.7(2). At that point, the only avenue to challenge the legal sufficiency of the petition was through the three-member panel set forth 277.5. *Id.* § 277.5. The District did not lodge any objections to the validity of the referendum petition.

As a consequence, it has no basis to refuse to submit the issue to the electorate.

Contrary to the District's assertion, this is not a case in which it substantially complied with the procedural requirements of section 277.7. *See Dix v. Casey's Gen. Stores, Inc.*, 961 N.W.2d 671, 682 (Iowa 2021) ("Substantial compliance is said to be compliance in respect to essential matters necessary to assure the reasonable objectives of the statute"). Rather, the District wholly failed to comply with any provision of section 277.7. *State v. Weitzel*, 905 N.W.2d 397, 407-08 (Iowa 2017) ("The district court's outright and wholesale omission regarding the criminal penalty surcharges cannot pass the substantial compliance threshold"). The summary judgment record establishes that Dan Pardock presented the District's secretary-designee with the referendum petition on June 2, 2020. (App. at 111). Neither the secretary, nor his designee, examined the petition until three days after it was filed. (App. at 111). Even then, the District never returned the petition to Pardock as invalid or lacking sufficient signatures.

(App. at 114).[5] Similarly, the District offered no evidence below to establish that either the Superintendent or school board took any formal action to reject the petition as invalid.

The District is simply wrong to suggest that its error did not prejudice Save our Stadiums. For starters, the failure to return the petition deprived Save our Stadium of the opportunity to obtain additional signatures. While it is speculative to guess how many signatures it may have acquired in the remaining time, the District's error deprived them of the ability to even try. In addition, the return of the petition serves as a formal rejection of the referendum request. At a minimum, the public is entitled to

[5] The District mischaracterizes the summary judgment record with respect to its purported "rejection" of the referendum petition. The District's board secretary, Shashank Aurora, testified that his representative, Erin Jenkins, brought the petition to his office. (App. at 89, 109-110). The District never notified Pardock that the petition lacked the number of required signatures. (App. at 114, 194). Notably, Aurora could not even identify the procedure employed by the District to accept or reject a petition. (App. at 112-113). Nor could he remember any specific action taken by the District to reject the petition. (App. at 114-115). Tellingly, the District did not introduce anything record signifying that it took any overt step to reject the referendum petition. According to Aurora, Jenkins brought the petition to his office, where it remained. (Pl's MSJ App. at 48-49)("It continued to be in my office").

know who rejected the referendum request, when it was rejected, and on what basis. Yet, the District never took any formal action to deny the validity of the petition or notify Pardock of its purported rejection. (App. at 95-96). As it stands now, the public remains in the dark. Moreover, the failure to return the petition meant that the objection process in section 277.5 was the sole exclusive means for the District to challenge its validity. Iowa Code § 277.5. As explained in *Berent*, the two levels of review (secretary & three-member panel) are not redundant. *Berent*, 738 N.W.2d at 200. The secretary reviews the four-corners of the petition whereas the three-member panel may consider extrinsic evidence produced at a public hearing. *Id.* The three-member panel established by law should have been given an opportunity to resolve the validity question prior to court intervention. *Id.*

III. THE DISTRICT COURT HAD JURISDICTION TO REVIEW THE DISTRICT'S REFUSAL TO CALL FOR A REFERENDUM ON THE USE OF SAVE REVENUES

As a fallback position, the District invents a new argument for the first time on appeal. It follows in three steps:

> *First*, the District rejected the petition as invalid because it lacked sufficient signatures;

> *Second,* the District performed a judicial function in rejecting the petition; and
>
> *Third*, a judicial function cannot be collaterally attacked.

(District's Br. at 39-40). The Court should reject this argument because it was not raised in the court below. (App. at 226-243); *DeVoss v. State*, 648 N.W.2d 56, 60 (Iowa 2002) ("Long ago, this court held that it would not decide a case based on a ground not raised in the district court"). It also should reject the argument as legally erroneous.

Despite its repeated claims, the District never rejected the referendum petition. The only manner in which the District may reject a petition due to insufficient signatures under section 277.7 is to return it to the petitioners – which it never did. Iowa Code § 277.7(1). Had the District returned the petition, Save our Stadium would have appealed that action directly. Because that never occurred, the petition was "accepted for filing" and "valid" as a matter of law, and the District was required to call a special election or rescind its prior resolution for the issuance of bonds. *Id.* §§ 277.7(2), 423F.4(2)(b). In other words, Save our Stadiums

could not directly appeal the rejection of the petition because the District never notified Pardock that the petition had been rejected. That explains why the objection process under section 277.5 exists — to adjudicate challenges to the validity of a petition from which an objector may appeal.

Alternatively, even assuming the District exercised a judicial function, its determination would still be subject to direct appeal. *Hammond v. Waldron*, 153 Iowa 434, 441 (1911) ("we concluded that its findings can only be questioned on appeal"); *Hill v. Gleisner*, 112 Iowa 397, 402 (1900) (recognizing that board canvas and findings are subject "to review on appeal"). Save our Stadiums sought declaratory judgment in district court concerning the validity of its referendum petition. (App. at 16). That is a direct challenge to the District alleged rejection of the petition. Even under the legal authorities cited by the District, Save our Stadiums had the right to seek direct review of the issue in district court. For this reason, the jurisdictional argument is untimely and frivolous.

CONCLUSION

For the reasons set forth above, the district court's summary judgment ruling must be reversed.

COST CERTIFICATE

I hereby certify that the costs of printing the Appellant's brief was $11.25, and that that amount has been paid in full by me.

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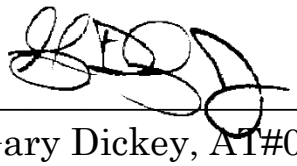

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