IN THE IOWA SUPREME COURT

SAVE OUR STADIUMS, DANIEL PARDOCK, TAMARA ROOD, DANIEL TWELMEYER, and KATIE PILCHER Plaintiffs-Appellants, v. **DES MOINES INDEP. COMM. SCHOOL DISTRICT, KYRSTIN DELAGARDELLE, HEATHER ANDERSON, ROB BARRON, DWANA BRADLEY, TEREE CALDWELL-JOHNSON, KALYN CODY, and KELLI SOYER** Defendants-Appellees	**Supreme Court No. 21-0999** Polk County Case No. CVCV060495 **ON APPEAL FROM THE IOWA DISTRICT COURT FOR POLK COUNTY** JEFFREY FERRELL, DISTRICT COURT JUDGE

DEFENDANTS-APPELLEES' Final Brief and Contingent Request for Oral Argument

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ROUTING STATEMENT

This case should be retained by the Iowa Supreme Court pursuant to Iowa R. App. P. 6.1101(2) as it presents a fundamental issue of broad public importance requiring ultimate determination by the Iowa Supreme Court.

STATEMENT OF THE CASE

A. Nature of the Case

On November 12, 2019, the Des Moines Independent Community School District (hereinafter, "the District") and Drake University announced plans to develop an outdoor athletic stadium on Drake's Des Moines campus. *See* Defendants' Response to Plaintiffs' Statement of Undisputed Material Facts at ¶ 2; (App. at 249). Funding for the project was earmarked from, in part, $15 million in Des Moines city sales tax revenue; Drake would privately raise an additional $4.5 million towards the project. Defendants' Statement of Undisputed Material Facts, ¶ 5 (hereafter "Defendants' SUF"); (App. at 258). The Des Moines Public Schools Board of Directors held a meeting and public hearing on the project on May 19, 2020, at which they voted unanimously in favor of a resolution proposing to use $15 million of Secure an Advanced Vision for Education ("SAVE") revenue to build the stadium. *See* May 19 Board Resolution, p. 2; (App. at 484).

The resolution included language that acknowledged eligible electors within the City of Des Moines had a right to file a petition requesting a special election on the use of SAVE funds to construct the stadium. *See* Iowa Code § 277.1; May 19 Board Resolution, p. 1; (App. at 483). At approximately 4:30 p.m. on the June 2, 2020 deadline to request a special election, Daniel Pardock submitted a petition containing 7,120 signatures to District Board Support staff member Erin Jenkins, requesting a special election on the SAVE revenue resolution.[1] *See* Plaintiffs' Petition at ¶ 32; (App. at 11).

District personnel reviewed the petition on June 5, 2020 and concluded that the petition contained less than 7,501 signatures, the minimum number of signatures required for a facially valid petition. *See* Shashank Aurora Depo., pp. 12–13: ln 20–16 (App. at 641–42); p. 24: ln 8–14 (App. at 653). Determining that the insufficient number of elector signatures made the petition deficient on its face, District staff rejected the petition and informed District Superintendent Thomas Ahart of the signature count and the petition's deficient status. Shashank Aurora Depo. p 14: ln 7–16; p. 15: ln 2–7; (App. at 643–44). The District considered the petition

[1] District personnel counted only 7,047 valid signatures included in the petition, while Plaintiffs maintain the petition contained 7,120 signatures. The 73-signature difference is not material to the legal questions presented by this appeal, so Defendants will proceed under the presumption that the petition contained 7,120 signatures.

issue concluded, but did not return the petition. Aurora Depo., pp. 13–16; (App. at 642–45).

B. <u>Relevant Events of the Prior Proceedings</u>

On July 28, 2020, Plaintiffs instituted this lawsuit seeking declaratory judgment, writ of mandamus, and injunctive relief. *See* Plaintiffs' Petition; (App. at 7–17). Plaintiffs brought the present lawsuit alleging: (1) Iowa Code section 277.7 requires the District to determine a petitions facial validity—including counting and confirming the number of elector signatures complies with the statutory requirements—at the exact moment the petition is submitted to a District representative; (2) the District incorrectly calculated the number of signatures necessary for a petition to be considered valid under Iowa Code section 423F.4(2)(*b*); and (3) the District's failure to accept the petition and call a referendum vote on the use of SAVE funds violated Plaintiffs' due process rights.

On March 22, 2021, Plaintiffs filed their Motion for Summary Judgment. (App. at 48–49). On April 6, 2021, Defendants filed a Resistance and Counter-Motion for Summary Judgment. (App. at 215–18). A hearing was held on the competing motions for summary judgment on May 7, 2021. (App. at 432). The district court entered a Ruling on Plaintiffs' Motion for Summary Judgment and Defendants' Counter-Motion for Summary

Judgment on July 2, 2021, denying Plaintiffs' motion and granting Defendants' counter-motion, awarding summary judgment in Defendants' favor, and dismissing Plaintiffs' action in its entirety. *See* District Court's Order at pp. 10, 15, 20; (App. at 441, 446, 451).

The district court deemed the District's failure to return the deficient petition amounted to a procedural mistake which was not a substantial violation of Iowa statute, the petition was not accepted, the District correctly set the number of signatures necessary to constitute a facially valid petition, and Plaintiffs' substantive due process rights were not violated. Summary judgment was then granted in Defendants favor.

Plaintiffs filed their Notice of Appeal of the district courts July 2 Ruling on July 20, 2021. (App. at 453–55).

C. Disposition in the District Court

The district court granted summary judgment in favor of the Defendants, and denied the Plaintiffs' Motion for Summary Judgment.

STATEMENT OF THE FACTS

A. The Drake Stadium Project

On November 13, 2019, the District announced preliminary plans to build a combined-use athletic facility on the campus of Drake University in Des Moines, Iowa, intending to use it to house the football and soccer

programs, as well as other mixed uses, for the District's member high schools. *See* Defendants' Response to Plaintiffs' Statement of Undisputed Material Facts at ¶ 2; (App. at 249). The plan called for the District and Drake University to partner in the project, with the District utilizing $15 million dollars in sales tax (SAVE) revenue to fund the construction, with Drake raising the remaining $4.5 million. Defendants' SUF ¶¶ 6-7, 9; (App. at 258).

Six months later, the District held a public hearing on the plan in front of its Board of Directors. May 19 Board Minutes, p. 2; (App. at 480). Present at the meeting were all seven of the board member-Defendants including Kyrstin Delagardelle, Heather Anderson, Rob Barron, Dwana Bradley, Teree Caldwell-Johnson, Kalyn Cody, and Kelli Soyer. May 19 Board Minutes, p. 2; (App. at 480). Defendant Soyer motioned the resolution to a vote and was seconded by Defendant Caldwell-Johnson. The resolution passed the full board by a vote of 7-0. May 19 Board Resolution, p. 2; (App. at 484). The passed resolution allowed for the eligible electors of the District to petition the District for either the rescission of the plan, or to force a public referendum to be put to the voters of the district. May 19 Board Resolution, p. 1; (App. at 483).

Following the District's passage of the resolution authorizing the use of SAVE funds, Plaintiff Daniel Pardock requested further information from the District about the legal requirements for a public petition. Pardock Emails, p. 2–3; (App. at 519–20). Superintendent Tom Ahart responded, informing Pardock that 7,502 signatures were required to constitute a facially valid public petition. Pardock Emails, p. 3; (App. at 520).

B. Petition by Save Our Stadiums

In order to submit a facially valid public petition, Plaintiffs needed to submit a formal public petition by June 2, 2020. May 19 Board Resolution, p. 1; (App. at 483). The public petition was required to be accompanied by a sufficient number of elector signatures to equal at least 30% of the number of eligible electors who cast votes in the last preceding election of school board officials. *See* Iowa Code § 423F.4(2)(*b*) (2019) (hereafter, statutory citations are to the 2019 Iowa Code unless otherwise designated); May 19 Board Resolution, p. 1; (App. at 483).

The last preceding election of school board officials was held on November 5, 2019. *See* Iowa Code § 277.1; House File 566 (2017); November 19, 2019 Certified Election Results for Tier 1 Races (hereafter "Tier 1 Results") (App. at 485–502); November 19, 2019 Certified Election Results for Tier 2 Races (hereafter "Tier 2 Results"); (App. at 503–12). The

November 5 election was certified by the Polk County Board of Supervisors as the "Regular City & School Election". Tier 1 Results, p. 1 (App. at 485); Tier 2 Results, p. 1; (App. at 503). This election included both city and school races, including races for the District's at-large seat, Director #1, Director #2 and Director #3, and a District Public Measure. Tier 1 Results, p. 7–8 (App. at 491–92); Tier 2 Results, p. 7 (App. at 509); Chiodo Affid., ¶¶ 5–9; (App. at 521–22).

At the November 5, 2019 election, 8,450 District residents in district one marked a ballot for the Director #1 race. Tier 1 Results, p. 7 (App. at 491); Chiodo Affid., ¶ 6; (App. at 522). 3,313 District residents in district two marked a ballot for the Director #2 race. Tier 1 Results, p. 7 (App. at 491); Chiodo Affid., ¶ 7; (App. at 522). 2,914 District residents in district three marked a ballot in the Director #3 race. Tier 1 Results, p. 7 (App. at 491); Chiodo Affid., ¶ 8; (App. at 522). 14,677 total District residents marked a ballot in the Director #1, #2, and #3 races. Tier 1 Results, p. 7 (App. at 491); *see* Chiodo Affid., ¶¶ 6–8; (App. at 522). 17,843 total District residents marked a ballot in the District At-Large race. Chiodo Affid., ¶ 5 (App. at 521); Tier 2 Results, p. 7; (App. at 509). A total of 23,154 District residents residing in Polk and Warren County marked a ballot and voted in

the District Public Measure at the November 5, 2019 election. Tier 2 Results, p. 7 (App. at 509); Chiodo Affid., ¶ 9; (App. at 522).

A total of 24,850 District residents cast ballots in Polk County at the November 5, 2019 election. Polk County Regular City and School Election District Turnout Report (hereafter "Polk Turnout Report"), p. 2; (App. at 514). 159 District residents of Warren County cast a ballot at the November 5, 2019 election. Polk Turnout Report, p. 2 (App. at 514); Warren County Precinct Report, p. 1; (App. at 516).

A total of 25,009 eligible District electors cast votes in the election, meaning petitioners needed to collect 7,502 signatures (30% of 25,009) to submit a valid public petition. John Chiodo Depo., pp. 17–19 (App. at 551–53); Polk Turnout Report, p. 2 (App. at 514); Warren County Precinct Report, p. 1; (App. at 516).

C. The District's Review and Rejection of the Petition

On June 2, 2020, District Board Support staff member Erin Jenkins received a public petition from the Plaintiffs requesting a public referendum to authorize the use of SAVE funds towards the Drake athletic stadium. Plaintiffs' Petition, ¶ 32; (App. at 11). On June 5, 2020, Jenkins and the District's Chief Financial Officer Shashank Aurora began to review the petition. Aurora Depo., p. 27: ln 13–19; (App. at 656).

Jenkins and Aurora counted 7,047 District elector signatures accompanied the Plaintiffs' public petition, well below the required 7,502 to trigger a possible referendum. Aurora Depo., pp. 12–13: ln 20–16 (App. at 641–42); pp. 13–14: ln 11–6 (App. at 642–43); p. 24: ln 8–14; (App. at 653). Jenkins and Aurora noted several of the elector signatures would require objections if the Plaintiffs had submitted a facially valid public petition. Aurora Depo., p.13–14: ln 11–6; (App. at 642–43). Aurora relayed the signature count and its deficient status to Superintendent Ahart, and the District closed the public petition after determining the Plaintiffs failed to satisfy the minimum signature requirement. Aurora Depo., p. 14: ln 7–16 (App. at 643); p. 15: ln 2–7; (App. at 644).

ARGUMENT

The undisputed facts demonstrate that Plaintiffs failed to submit a facially valid petition requesting a special election to authorize the District to contribute SAVE funds towards the construction of an athletic stadium at Drake University.

Moreover, the undisputed facts demonstrate that the District's failure to return the facially deficient petition once it was determined to be invalid constituted only a technical defect, and did not prejudice or otherwise substantively restrict Plaintiffs' ability to petition for a special election.

Further, the Plaintiffs' statutory right to petition to submit the SAVE funding question for public referendum does not implicate a federal right to vote, but instead represents a right to petition to obtain the right to vote, and the District's refusal to submit the question to a public referendum did not violate Plaintiffs' substantive due process rights.

On all of these issues, the district court's detailed and well-reasoned grant of summary judgment in favor of Defendants must be affirmed.

I. The district court correctly determined Plaintiffs' petition for public referendum was deficient on its face.

The Plaintiffs' submission of a petition 382 signatures short of "the required number of signatures" means that their petition was deficient on its face and failed to satisfy the requirements mandated by Iowa Code section 423F.4(2)(*b*).

A. Preservation of Error and Standard of Review

Defendants agree with Plaintiffs' statement on preservation of error and scope and standard of review. Appellate courts review the district court's grant of summary judgment for correction of errors at law. *Winger Contracting Co. v. Cargill, Inc.*, 926 N.W.2d 526, 535 (Iowa 2019); *see Standard Water Control Sys., Inc. v. Jones*, 938 N.W.2d 651, 656 (Iowa 2020) (reviewing questions of statutory interpretation for correction of errors at law).

Summary judgment is proper if "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." *Green v. Racing Ass'n of Cent. Iowa*, 713 N.W.2d 234, 238 (Iowa 2006).

B. Plaintiffs Failed to Satisfy the Unambiguous Statutory Requirements for a Valid Petition for Public Referendum

25,009 District residents and electors cast ballots at the "Regular City & School Election" on November 5, 2019. Chiodo Affid., ¶ 4; (App. at 521). Based on a plain reading of Iowa Code section 423F.4(2)(*b*), the Defendants determined—and the district court agreed—that the required number of signatures necessary to satisfy the thirty percent threshold is calculated using the total number of voters who voted **at** the last election, irrespective of whether those voters voted for specific measures, races, or candidates. July 2 Order at 11, 15 (App. at 442, 446).

Using the total number of participating voters from the November 5, 2019 election, a facially valid petition under Iowa Code section 423F.4(2)(*b*) was required to contain 7,502 signatures. Plaintiffs' petition contained no more than 7,120 signatures. Neither party disputes that Plaintiffs attempted to submit a petition on June 2, 2020 containing as many as 7,120 signatures.

The crux of the disagreement focuses on whether 7,120 signatures satisfies the thirty percent threshold required by section 423F.4(2)(*b*).

Defendants' calculations and reliance on the total number of voter participants at the November 5 election is the only reasonable and workable approach for determining the minimum number of signatures necessary to satisfy the requirements of section 423F.4(2)(*b*). *State v. Iowa Dist. Ct.*, 889 N.W.2d 467, 473 (Iowa 2017) ("Generally, [courts] try to interpret statutes so they are reasonable and workable."); *Walthart v. Bd. of Dir. Of Edgewood-Colesburg Comm. Sch. Dist.*, 667 N.W.2d 873, 877–78 (Iowa 2003) ("Among the most venerable of the canons of statutory construction is the one stating that a statute should be given a sensible, practical, workable, and logical construction." (quoting *Van Baale v. City of Des Moines*, 550 N.W.2d 153, 155–56 (Iowa 1996), *abrogated by Godfrey v. State*, 898 N.W.2d 844 (Iowa 2017))).

A statute must first be determined to be ambiguous prior to engaging in statutory interpretation. *Colwell v. Iowa Dept. of Human Servs.*, 923 N.W.2d 225, 232 (Iowa 2019). Ambiguity exists if reasonable minds could disagree regarding either the definition of particular words in a statute, or the statute's general scope and meaning. *Id.*

Iowa Code section 423F.4(2)(*b*) provides that, following the passage of a resolution to use SAVE funds, petitioners have fifteen days to submit a petition 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." The full text provides:

> For bonds subject to the requirements of paragraph "a", if at any time prior to the fifteenth day following the hearing, the secretary of the board of directors receives a petition containing the required number of signatures and asking that the question of the issuance of such bonds be submitted to the voters of the school district, the board shall either rescind its adoption of the resolution or direct the county commissioner of elections to submit the question to the registered voters of the school district at an election held on a date specified in section 39.2, subsection 4, paragraph "c". **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.** If the board submits the question at an election and a majority of those voting on the question favors issuance of the bonds, the board shall be authorized to issue the bonds.

Iowa Code § 423F.4(2)(*b*) (emphasis added).

An election pursuant to Iowa Code section 277.1 is an election "held biennially on the first Tuesday after the first Monday in November of each odd-numbered year in each school district for the election of officers of the district and merged area. . . ."

The State of Iowa passed legislation combining the previously separate city and school elections in 2017. House File 566 (2017); (App. at 456–77). That legislation set November 5, 2019, as the date upon which the first combined "Regular City & School Election" took place. The "last preceding election of school officials" can only be the "Regular City & School Election" under Iowa law. As a result, any ballot or vote cast by a District resident at the "Regular City & School Election" is necessarily a vote **at** the "last preceding election of school officials". *See* Iowa Code § 277.1; Iowa Code § 423F.4(2)(*b*).

Notably, in certifying the election results in accordance with statutory requirements, the Polk County Board of Supervisors certified each race (including city, school and public measures) as the "true and correct abstract of votes cast in this county in the Regular City & School Election held on the 5th day of November, 2019…" *See* Tier 2 Results, p. 7; (App. at 509).

Plaintiffs argue that the statute is unambiguous, but then attempt to inject ambiguity into Iowa Code section 423F.4(2)(*b*) by presenting an unreasonable and strained interpretation. They argue that the statutory threshold of "the number of voters at the last preceding election of school officials under [Iowa Code] section 277.1" refers only "to the number of

people who performed the act of marking their ballots for the November 5th at-large school board director race." Plaintiffs' Brief at 20–21.

The contortionism used by Plaintiffs to reach this interpretation runs in the face of Iowa's preference for sensible and practical interpretations of statutory language. *See Walthart*, 667 N.W.2d at 877–78. Further, the application of this interpretation is patently unworkable when full consideration is given to election procedures required by statute involving the counting of ballots and certification of elections once the act of voting is completed.

Plaintiffs attempt to limit the available interpretations to a patently false choice. They argue Iowa Code section 423F.4(2)(*b*)'s threshold condition of the "number of voters at the last preceding election of school officials" must mean either "the number of people who voted in the at-large school board director's race," or "the number of people who received a ballot in the 2019 general election." Appellants Brief at 18. But neither of these interpretations accurately reflect what section 423F.4(2)(*b*) unambiguously says.

Section 423F.4(2)(*b*) makes no mention of an "at-large school board director's race," nor does the word "ballot" appear anywhere in the text of the statute. *See Piuser v. Sioux City*, 262 N.W. 551, 554 (Iowa 1935)

(dismissing arguments favoring an interpretation of a statute based on provisions not included in the statute under examination). Further, it is not the District's position that everyone who received a ballot in the 2019 general election should be counted. *See* Plaintiffs' Brief at p. 18. Individuals who requested and received absentee or mail-in ballots but did not vote or return the ballot should not be considered. Instead, the 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 requires.

The disputed portion of Iowa Code section 423F.4(2)(*b*) is unambiguous in its scope and meaning; a petition requesting a public referendum on the use of SAVE funds must be accompanied by a minimum threshold of "eligible electors" signatures that is equal to or greater than thirty percent of voters at the last preceding election of school officials. *See* Iowa Code § 423F.4(2)(*b*). On its face, this statutory language places two requirements on the validity of a petition for a public referendum.

The first statutory requirement is one of quality. That is, a petitioner for public referendum can only contain signatures from "eligible electors." Iowa defines the term "eligible elector" within the framework of public elections as "a person who possesses all of the qualifications necessary to entitle the person to be registered to vote, whether or not the person is in fact

so registered." Iowa Code § 39.3; *see* IOWA CONST. art. II, § 1; *Buchmeier v. Pickett*, 142 N.W.2d 426, 428–29 (Iowa 1966) ("Whenever the legislature employs the word 'elector' without qualification or explanation, the word may be assumed to have reference to a person authorized by the Constitution to exercise the elective franchise."). Thus, individuals able to sign the petition include all those who are legally authorized to register to vote, whether they are actually registered or not. *See id.* For purposes of this appeal, the District does not dispute the 7,120 signatures submitted with the Plaintiffs' petition represent "eligible electors," thus satisfying the "quality" requirement.

The second statutory requirement is one of quantity. That is, the number of signatures must equal in number the greater of one hundred or thirty percent of the number of voters at the last preceding election of school officials under section 277.1. Iowa Code § 423F.4(2)(*b*). Plaintiffs' attempt to make hay out of this admittedly archaic phrasing by claiming the phrase "voters at the last preceding election of school officials under section 277.1" can only refer to voters "who performed the act of marking their ballots for the November 5th at-large school board director race." Appellants' Brief at 21. This logical leap is not supported by either the text of the statute or controlling Iowa precedent. *See Piuser*, 262 N.W. at 554.

The Iowa Supreme Court in *Piuser* confronted a similar petition issue, wherein a statute setting forth the requirements to trigger an election required the filing of a petition which "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." *Piuser*, 262 N.W. at 553. One of the issues confronting the court was whether the challenged petition satisfied the twenty-five percent threshold necessary to trigger an election. *Id.* at 555–56. Without analysis, the court recounted the evidence showing:

> the petition contained 8,876 names, **that the number of those who voted at the last regular municipal election was 19,764**, and that the number of qualified electors whose signatures were required on the petition, in order to give the city council jurisdiction to call an election was, therefore, 4,941.

Id. at 555–56 (emphasis added).

Importantly, the court did not concern itself with the particular races or issues placed on the ballot, but instead looked only to the total number of "those who voted **at** the last regular municipal election" as laid out in the statute. *Id.* (emphasis added); *see* Iowa Code ch. 39, § 709 (1931) (utilizing the term "municipal elections" to refer to general or special elections irrespective of the issues or public offices listed on the ballot). This reasonable approach was necessary, in part, because Iowa law in effect at the time of the public petition required destruction of election ballots after six

months. *See* Iowa Code ch. 41, § 852 (1931) ("If at the expiration of six months no contest is pending the officer having the ballots in custody, without opening the package in which they have been inclosed, shall destroy the same by burning. . . .").

The petition in *Puiser* was filed on August 19, 1932, in the city clerk's office in Sioux City, Iowa. *Puiser*, 262 N.W. at 552. The last preceding regular municipal election before that date would have taken place in 1930. *See* Iowa Code ch. 35 § 504 (1931) ("The general election for state, district, county, and township officers shall be held throughout the state on Tuesday, next after the first Monday in November of each even-numbered year."). Thus, none of the voting ballots submitted at the 1930 general municipal election would have been available to the litigants when the public petition was filed in 1932. This constraint would have meant that the public petition filed in *Puiser* more than six months after the preceding election could not rely on a hand-count of elector ballots to provide the number of signatures required to trigger a public referendum.

This same mandatory destruction of ballots was required of the November 5, 2019 ballots after six months. *See* Iowa Code § 50.13(1) (2019). Here, the relevant election occurred on November 5, 2019.

Plaintiffs' filed their public petition June 2, 2020, almost eight months after the election. Aurora Depo., p. 27: ln 10–19; (App. at 656).

In both the present dispute and in *Puiser*, the petitions for election were filed after six months had elapsed since the election, meaning officials would not have individual ballots available to allow a hand count of votes in each race. There would be no method to account for ballots which "undervoted" or only participated in particular races. Further, the statute makes no accommodation for these "undervotes" because, when read in whole, both the statute at issue in *Puiser* and Iowa Code section 423F.4(2)(*b*) are not concerned with voters in individual races, but rather the number of people who voted **at** the election. *See* Iowa Code § 423F.4(2)(*b*); *Piuser*, 262 N.W. at 553; Iowa Code ch. 35 § 504 (1931). A review of Iowa's elections at the time *Puiser* was decided illustrates why the statute, and the *Puiser* court, adopted this practical approach to counting voters.

When *Puiser* was decided, the last "municipal election" could have included a race for municipal officers (Iowa Code ch. 326 § 6492 (1931) (mayor and councilmen candidacy during general municipal elections)), a separate municipal referendum (Iowa Code ch. 475 § 10645 (1931) (establishment of a municipal court)), or the establishment or discontinuation of municipal activities (Iowa Code ch. 286 §§ 5594, 5599

(1931)). The *Puiser* court did not look beyond the total number of voters at the election though—in accordance with both statutory interpretation and practical considerations—to confirm that voter count arising at the "last regular municipal election" only included those that participated in the "municipal election." *See* Iowa Code ch. 35 § 504 (1931) ("The general election for state, district, county, and township officers shall be held throughout the state on Tuesday, next after the first Monday in November of each even-numbered year.").

An examination of how many voters voted in each race, or to separate voters who voted in the state, district, or other races from those participating in the municipal races, would have been impractical—potentially impossible—and contrary to the plain requirements of the statute setting forth the referendum requirements.

Plaintiffs' alternative reliance on "tally books" maintained by the Polk County auditor in support of their strained interpretation is also misplaced. *See* Appellants Brief at 27–29. The tally books Plaintiffs' reference only provide whole numbers for the number of votes for each race that were counted by those particular machines. *See* Appellants' Brief at p. 27–29. These "tally books" do not provide the names of the voters who voted in those races.

For instance, a "tally book" for a single vote counting machine could show 100 total participating voters could have marked a ballot for the At-Large Position in a particular precinct, with 80 votes for Candidate A, 10 votes for Candidate B, and 10 undervotes or voters who did not mark the ballot in that race. The same machine would also show 100 total participating voters for Director Position #1 in that precinct, with 70 votes for Candidate X, 15 votes for Candidate Y, and 15 undervotes of voters who did not mark a candidate in the Director Position #1 Race.

Looking strictly at the "tally books" for that particular hypothetical voting machine, election officials cannot tell whether the 10 undervotes in the At-Large race voted in the Director Position #1 race, or whether the 15 undervotes in the Director Position #1 race voted in the At-Large race. It is entirely possible the 10 under-votes in the At-Large race voted in the Director Position #1 race, thus making them "voters at the last election of school board officials." Applying Plaintiffs' method of counting voters though, any one of the 10 voters who left the At-Large race unmarked, but marked the ballot in the Director Position race would not count towards the statutory threshold number of voters set by Iowa Code section 423F.4(2)(*b*), **despite** meeting every statutory requirement by being a "voter at the last election of school board officials."

The only way to determine an accurate number of voters—without disenfranchising a voter who participated in a district race but not the at-large race—is to individually examine each submitted voter ballot. Chiodo Affid., ¶ 11; (App. at 522). Pursuant to Iowa Code section 50.13(1), those ballots are destroyed after six months following an election, and are unavailable to be examined in situations like this one where a public petition is submitted after their destruction. The only practical method left to determine the number of voters "**at** the last election of school officials" is to rely on the total number of voters who participated in the election, without trying to parse which race individual voters marked their ballot for.

Both the statutory interpretation of the *Puiser* court and the context in which that case arose make clear that a practical application of the statute requires that District officials look to the total number of voters who voted **at** the relevant election. In both *Puiser* and the present instance, the court is presented with a petition to trigger municipal action which must satisfy statutory thresholds to be facially valid. In applying the statutory thresholds, both the *Puiser* court, and the district court, looked no further than the words present in the statute to determine that the quantifiable threshold a petition must reach is set by the total number of voters **at** the election referenced in the statute. In *Puiser*, that threshold was set by the total number of those

who voted at the last regular municipal election, irrespective of the candidates or issues the specific voters voted on. In the present matter, the threshold is set by the total number of voters who voted at the November 5, 2019 election, irrespective of the candidates or issues the individual voters voted on.

Plaintiffs cannot now split "the last election of school officials" from the other candidates and issues being voted on at the same election when the statute, Iowa courts, and the practicality of Iowa's elections does not allow for that division. *See* District Court's Order at 12–13 (App. at 443–44); Iowa Code section 49.41 (2019) (recognizing that the school board elections and city elections constitute occur during the "same election").

Pursuant to the Polk County Supervisors' certification, any ballot cast by a District resident, even if the resident chose not to mark the ballot for any specific school board race or other electoral issue, was a vote at the "Regular City & School Election" and thus the resident was a voter at the last preceding election of school officials. *See* Chiodo Affid., ¶ 1–4; (App. at 521). It is undisputed that 25,009 ballots were cast by District voters at the "Regular City & School Election." *See* Chiodo Affid., ¶ 1–4; (App. at 521). Thirty percent of this figure equates to 7,502 signatures required to trigger action under Iowa Code section 423F.4(2)(*b*). Plaintiffs failed to satisfy this

statutory threshold when they submitted a petition containing 382 signatures less than the number required by 423F.4(2)(*b*). Therefore, the submitted petition was deficient on its face and the district court's grant of summary judgment in favor of the Defendants must be affirmed.

II. The district court correctly applied Iowa Code § 277.7's procedural requirements in holding the District never accepted Plaintiffs' petition for public referendum.

The District followed the procedures mandated in Iowa Code section 277.7 when it examined the Petition to verify its facial validity. Because the Petition lacked the required number of signatures, the District correctly rejected the Petition. The Districts procedural mistake in failing to return a facially deficient petition did not prejudice Plaintiffs because there was no mechanism to cure the facially deficient petition once the time limit for filing had passed. And, the attempt to overturn the District's denial of the facially invalid Petition on procedural grounds is an impermissible collateral attack.

A. Preservation of Error and Standard of Review

Defendants agree with Plaintiffs' statement on preservation of error and scope and standard of review. Appellate courts review the district court's grant of summary judgment for correction of errors at law. *Winger Contracting Co. v. Cargill, Inc.*, 926 N.W.2d 526, 535 (Iowa 2019); *see*

Standard Water Control Sys., Inc. v. Jones, 938 N.W.2d 651, 656 (Iowa 2020) (reviewing questions of statutory interpretation for correction of errors at law). Summary judgment is proper if "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." *Green v. Racing Ass'n of Cent. Iowa*, 713 N.W.2d 234, 238 (Iowa 2006).

B. The District correctly rejected the Plaintiffs' Petition for Referendum

Iowa Code section 277.7 controls what a district in receipt of a petition must do to either accept or deny the petition as filed, and it provides:

> 1. A petition filed with the school board to request an election on a public measure shall be examined before it is accepted for filing. If the petition appears valid on its face it shall be accepted for filing. If it lacks the required number of signatures it shall be returned to the petitioners.
>
> 2. Petitions which have been accepted for filing are valid unless written objections are filed. Objections must be filed with the secretary of the school board within five working days after the petition was filed. The objection process in section 277.5 shall be followed for objections filed pursuant to this section.

Iowa Code § 277.7.

Therefore, a District is required to examine a submitted public petition before accepting it for filing. If an examination of the public petition reveals

the petition lacks the required number of signatures on its face, the petition is not valid as a matter of law. *See id.*

Thus, a district must perform an initial review upon receipt of a petition, and if the petition appears valid on its face, it must be accepted for filing, and if not, it must be subsequently returned to the Petitioners. *See id.* After a petition is deemed accepted for filing, the Petition is then reviewed subject to third-party objections regarding the validity of the Petition's signatures and status of the signatories; the filing of those objections with the secretary of state must occur within five days from the Petition's filing. *See id.*

The District's role in reviewing a petition is to determine compliance with filing requirements which primarily involves a review of the number of signatures submitted with a public petition. *See id.* If the public petition fails to meet the legal requirements mandated by Iowa Code section 423F.4(2)(*b*), the District may reject the petition without resorting to filed objections or further proceedings. *See id.*

A reasonable time after receiving Plaintiffs' Public Petition, the District's Chief Financial Officer Shashank Aurora performed a facial review of the Petition to ascertain the total number of signatures it contained. Aurora Depo., p. 24–27; (App. at 653–56). Plaintiffs submitted a facially

invalid petition that was 382 signatures short of the requisite number of signatures. The authoritative count of the District showed Petitioners fell well below the required number under Iowa law, making it insufficient to trigger a potential referendum on the resolution. Aurora Depo., p. 13–16; (App. at 642–45). The District then officially rejected the Petition for filing. Aurora Depo., p. 13–16; (App. at 642–45).

The District has satisfied Iowa Code section 277.7 by facially evaluating and rejecting the Plaintiffs' Public Petition when it failed to meet the minimum signature requirements set by Iowa Code section 423F.4(2)(*b*). As a result, Plaintiffs' motion for summary judgment must be denied and the district court's grant of summary judgment in favor of Defendants must be affirmed.

C. Plaintiffs' Suffered No Prejudice in the District's Administrative Failure to Return the Public Petition Because Plaintiffs Could Not Amend the Facially Deficient Petition Once the Deadline for Filing the Petition had Passed

Unless Plaintiffs' can show they were misled, or that they were prejudiced in failing to recover a facially invalid petition, the District's judgment that Plaintiffs' public petition was facially invalid should remain undisturbed despite any procedural error or oversight in processing the petition after it was adjudged invalid.

The Plaintiffs were fully informed of the number of signatures needed to satisfy the requirements of Iowa Code section 423F.4(2)(*b*) before submitting the public petition to the District. Pardock Emails, pp. 2–3; (App. at 519–20). Despite being fully and accurately informed of the required number of signatures, Plaintiffs submitted a public petition with less than the requisite number of signatures on the last possible day, less than an hour before the close of business. Aurora Depo., pp. 25–27; (App. at 654–56). Because the Plaintiffs' petition was submitted for filing the last hour on the last day before the filing deadline, the District could only review the Petition after the deadline for filing had passed.

Once the District reviewed the public petition, it was able to count the accompanying signatures and determine the number of signatures were less than what Iowa law required. The District adjudged the public petition as facially deficient. Once the public petition was determined to be facially invalid, Iowa Code section 277.7(1) required the District to return the defective petition to the Plaintiffs. Unfortunately, District officials failed to return the petition to the Plaintiffs. Despite the error, the District substantially complied with Iowa Code section 277.7(1) when it reviewed and determined the petition facially deficient. *See Crawford v. Schoo Tp. Of Beaver*, 166 N.W. 702, 705 (Iowa 1918) ("The courts are, and ought to be,

slow to interfere with the conduct of public business by public officers . . . . If they manifest good faith and show substantial compliance with the law prescribing their duties, their acts should be sustained against . . . technical defects and omissions occasioning no prejudice to public interests.").

Despite the District's procedural violation of the statute, the district court correctly held that the failure to return the invalid Petition was not a substantial violation warranting relief. The district court's ruling must be affirmed because the failure to return the deficient petition was a procedural mistake which did not cause prejudice; Plaintiffs' had no available means to amend or resubmit a facially valid public petition once the submitted petition was determined to be invalid.

Once the statutory 15-day deadline for filing the public petition expired, the time to submit or amend a petition terminated. Iowa Code section 423F.4(2)(*b*); *see Kochen v. Young*, 107 N.W.2d 81, 84 (Iowa 1961) (recognizing and adopting the general rule that a time limit fixed by statute for filing a referendum petition is mandatory and jurisdictional). Thus, when the District determined Plaintiffs' petition was facially invalid, Plaintiffs' were statutorily barred from amending it to make it sufficient, or resubmitting a second, sufficient public petition. *See Kochen*, 107 N.W.2 at

84 ("Nor may an insufficient petition be made sufficient by amendment after the time limit for filing a petition has expired.").

Therefore, the only purpose served in returning the facially invalid petition was to provide Plaintiffs with constructive notice that their public petition was invalid. But, Plaintiffs' already knew that their public petition was invalid under Iowa law. *See* Pardock Emails, pp. 2–3; (App. at 519–20). Thus, the failure to return a public petition that Plaintiffs' knew was facially invalid when submitted could not cause Plaintiffs' prejudice.

Because Plaintiffs were statutorily and jurisdictionally barred from amending their deficient public petition once the deadline for filing had passed, the Plaintiffs were not prejudiced by the District's failure to return the public petition and the district court's grant of summary judgment must be affirmed.

D. The Plaintiffs' Attacks on the District's Rejection of Their Public Petition on the Grounds that the Petition was Not Returned is an Improper Collateral Attack on the District's Exercise of an Express Judicial Function

Iowa Code section 277.7 expressly and exclusively awards jurisdiction to the District to determine whether a petition satisfies the requisite number of signatures necessary to trigger further action. *See Hammond v. Waldron*, 133 N.W. 661, 663–65 (Iowa 1911) (collecting Iowa cases for the proposition that an express statutory grant of authority to an

executive body to determine whether a public petition satisfies a statutory requirement is jurisdictional in character). Inherent in this limited jurisdictional grant is the proposition that the District's determination that a petition is deficient is "binding and conclusive . . . until it is reversed or set aside" and collateral attacks challenging the ultimate determination are not permitted. *Hammond*, 133 N.W. at 665.

The Plaintiffs' frame the issue as one involving "regulatory measures" when in actuality Plaintiffs' seek relief from the District's exercise of a judicial function. *See* App. Brief at 33. Because the District was performing a judicial function in reviewing the Petition, a challenge to the District's process for determining the facial validity of a public petition—including the internal process for adjudging the petition, length of time necessary to review a petition, and post-adjudication conduct—cannot, by themselves, reverse or overturn the District's determination that a petition is invalid. *See Hill v. Gleisner*, 84 N.W. 511, 513 (Iowa 1900).

The judicial function performed by the District in evaluating and determining the facial validity of a public petition is protected from collateral challenge. *Hammond*, 133 N.W. at 665. Necessarily included as part of the District's judicial function is post-determination procedures directly related to its statutory responsibilities. *See Hill*, 84 N.W.at 513.

Iowa Code section 277.7 imposes a post-determination obligation on the District to return an invalid public petition. But, the statute does not abrogate or otherwise eliminate the bar on collateral challenges to the District's judicial determination.

A challenge on the basis of the District's failure to return an invalid petition **after** the District rejected the Petition does not directly challenge the District's ultimate determination that a petition is invalid. *See Hammond*, 133 N.W. at 665. Instead, the type of argument raised by Plaintiffs attempts to circumvent the judicial role the District plays in determining the validity of a public petition. Iowa law disfavors these attempts to manufacture minor technical violations of procedure to change outcomes. *See e.g. Brutsche v. Coon Rapids Community School Dist*, 255 N.W.2d 337 (Iowa 1977) (holding mere irregularities in the conduct of a school election do not affect the result of the school election when there was no showing that the proceedings and the election were not in substantial compliance with the laws of Iowa). Pursuant to *Hammond*, Plaintiffs' are barred from overturning the binding determination of the District through a collateral challenge. *Hammond*, 133 N.W. at 665.

In effect, this bar on collateral challenges mirrors and shares many of the same characteristics as much more recently examined common law

doctrines. *See Venckus v. City of Iowa City*, 930 N.W.2d 792, 800–01 (Iowa 2019) (reiterating that judicial immunity applies to both government officials and their employing municipalities).

Plaintiffs' argue that the District "waived" any right to challenge the validity of the petition under section 277.7 by failing to return the deficient petition. App. Brief at 32. The District cannot "waive" its obligations to review a petition under section 277.7, because that statute explicitly burdens the District with the limited judicial responsibility of determining the Petition's facial validity; instead, the District fulfilled the primary purpose of section 277.7(1) by examining the Petition within a reasonable time, and subsequently rejecting it as facially deficient.

It only stands to reason then, that the requirement that the District return an invalid public petition serves as a perfunctory notice of rejection of the petition. In this instance though, a perfunctory notice of rejection was not necessary because Plaintiffs were aware the public petition was invalid when they submitted the petition for filing.

If Plaintiffs are entitled to any relief under the statute, it is strictly limited to the statutory relief of a return of the Petition, and no more. Plaintiffs have not requested this specific relief though, presumably because they knew at the time of submission that their public petition was facially

invalid. Any additional relief beyond the explicit requirements of the statute based on the District's failure to return Plaintiffs' petition would constitute a collateral attack on the District's judicial role under the statute. For these reasons the district court's award of summary judgment in favor of the District must be affirmed.

III. Iowa Code § 423F.4(2)(*b*) does not require the District to hold a public referendum, and the refusal to hold a referendum did not violate Plaintiffs' Due Process Rights.

Plaintiffs' did not suffer a cognizable violation of their due process rights when the District rejected their public petition. At most, the public petition was a petition for the right to obtain the right to vote, and did not trigger any substantive due process concerns. And even if a substantive due process violation could somehow arise from a petition for the right to obtain the right to vote, Plaintiffs have failed to show that such a violation reaches the level of "conscience shocking" behavior warranting due process relief.

Procedural due process claims involve a two-step analysis. Initially, Plaintiffs must demonstrate that the District deprived them of a life, liberty, or property interest. If successful, Plaintiffs must then establish that the Defendants deprived them of that interest without sufficient "process." *See Krentz v. Robertson Fire Protection Dist*., 228 F.3d 897, 902 (8th Cir. 2000); *Bowers v. Polk Cty. Bd. of Sup*, 638 N.W.2d 682, 690-91 (Iowa

2002). In other words, the requirements of procedural due process apply only to the deprivation of interests encompassed by the Fourteenth Amendment's protection of life, liberty and property. *See Bd. of Regents v. Roth*, 408 U.S. 564, 569 (1972). Liberty interests stem from the U.S. Constitution and include interests such as "freedom from bodily restraint, the right to contract, the right to marry and raise children, and the right to worship . . . ." *Bowers*, 638 N.W.2d at 691 (citing *Roth*, 408 U.S. at 572). No such rights have been presented or shown here.

Property interests, on the other hand, "are created and their dimensions are defined not by the Constitution but by an independent source such as state law." *Id.* (quotations omitted). Plaintiffs cannot establish that they, or voters in general, have a property interest established by state law. Iowa Code §423F does not vest in them any tangible or intangible property interests. *Compare, Goss v. Lopez*, 419 U.S. 565, 575-76 (1975) (holding that if a state makes public education programs available to eligible children, a constitutionally protected property interest exists which cannot be denied without appropriate due process), *with, Dobrovolny v. Moore*, 126 F.3d 1111, 1113 (8th Cir. 1997) (finding appellants had not demonstrated a right or interest in an initiative process "substantial enough to rise to the level of a 'legitimate claim of entitlement' protected by the Due Process Clause.").

If a protected interest is shown to exist, courts then apply a balancing test to determine whether a violation has occurred, analyzing:

> 1) the nature and weight of the private interest affected by the challenged official action; 2) the risk of an erroneous deprivation of such interest as a result of the summary procedures used; and 3) the governmental function involved and state interests served by such procedures, as well as the administrative and fiscal burdens, if any, that would result from the substitute procedures sought.

Hughes v. City of Cedar Rapids, Iowa, 840 F.3d 987, 994 (8th Cir. 2016) (quoting *Booker v. City of Saint Paul*, 762 F.3d 730, 734 (8th Cir. 2004)).

The only arguable interest at issue here is the right created by Iowa Code section 423F.4(2)(*b*). This right can be characterized as 'the right to petition to obtain the right to vote." *Bowers*, 638 N.W.2d at 692. This is not a constitutionally protected liberty or property interest. Further, even in the event Plaintiffs were able to secure sufficient signatures to compel a referendum, the board retained power to simply rescind the vote. *See* Iowa Code §423F.4(2)(*b*) (stating the board shall either rescind its adoption of the resolution or direct the county commissioner of elections to submit the question to the registered voters of the school district at an election). As a result, plaintiffs' rights were "minimal at best." *Cf. Bowers*, 638 N.W.2d at 692 (explaining the appellant's right was "minimal at best" because even if he succeeded in the petition process, the board of supervisors could abandon

the issue if it so chose). Iowa Code §423F.4(2)(*b*) does not establish any right to life, liberty, or property that is protected under the Due Process Clause. *See Dobrovolny*, 126 F.3d at 1113.

In the event plaintiffs allege a violation of substantive due process, they cannot overcome their substantial burden to show a violation of the Fourteenth Amendment." *Hall v. Ramsey Cty*., 801 F.3d 912, 917 (8th Cir. 2015). Mere infringement of an interest does not satisfy Plaintiffs' considerable burden; the question is "whether the extent or nature of the [infringement] . . . is such as to violate due process" to the extent that an official's conduct was both "conscience-shocking" and "violated one or more fundamental rights that are deeply rooted in this Nation's history and tradition . . . ." *Id.* (quotation omitted) (alterations in original).

"In general, substantive due process is concerned with violations of personal rights . . . so severe . . . so disproportionate to the need presented, and . . . so inspired by malice or sadism rather than a merely careless or unwise excess of zeal that it amounted to a brutal and inhumane abuse of official power literally shocking to the conscience." *Id.* at 918 (quotation omitted) (alterations in original). Although "election practices that systematically deny voting rights may rise to the level of fundamental unfairness by denying the right to vote," those decisions have been limited to

"apply only to the process of conducting (or failing to conduct) elections." *Molinari v. Bloomberg*, 596 F. Supp. 2d 546, 569 (E.D.N.Y. 2009), aff'd, 564 F.3d 587 (2nd Cir. 2009) (citing Circuit case law).

Clearly the facts of this case do not satisfy the weighty burden described in *Molinari*, *Hall*, and *Bowers*. The District did not deny anyone the right to vote. *See Bowers*, 638 N.W.2d at 694. Furthermore, nothing in the record regarding the District's actions can be said to shock the conscience. *See id.* (quoting *Blumenthal Inv. Trusts v. City of West Des Moines*, 636 N.W.2d 255, 265 (Iowa 2001)). There is no evidence either that the actions were pretextual, arbitrary or capricious. *Id.* The District's actions with respect to the petition were conducted in accordance with the Board members' duties and involved discussion and a vote on the propriety of the petition at a regular Board meeting.

Thus, Plaintiffs' due process claim fails and the district court's grant of summary judgment in favor of Defendants must be affirmed.

CONCLUSION

For the reasons stated herein, Defendants-Appellees request the summary judgment ruling be affirmed.

CONTINGENT REQUEST FOR ORAL ARGUMENT

Defendants request to be heard in oral argument if Plaintiffs are granted oral argument.

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CERTIFICATE OF COST

I hereby certify that the costs of printing the Appellees' brief was $0.00, exclusive of sales tax, delivery, and postage.

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CERTIFICATE OF COMPLIANCE

This Brief complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(g)(1) because this brief contains 8,772 words, excluding the parts of the Brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

This Brief complies with the typeface requirements of Iowa R. App. P. 6.903(1)(e) and the type-style requirements of Iowa R. App. P. 6.903(1)(f) because this Brief has been prepared in a proportionally spaced typeface using Microsoft Word in 14 point, Times New Roman.

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CERTIFICATE OF FILING AND SERVICE

The undersigned certifies a copy of Defendants-Appellees' Final Brief was filed with the Clerk of the Iowa Supreme Court via EDMS and served upon the following persons by EDMS on the 14th day of March, 2022:

By: */s/ Benjamin J. Kenkel*