

**IN THE SUPREME COURT OF IOWA**

Supreme Court No. 23-0661

District Court No. CVCV059748

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**LINN COUNTY AUDITOR JOEL MILLER,**

PLAINTIFF-APPELLANT

v.

**IOWA VOTER REGISTRATION COMMISSION,**

DEFENDANT-APPELLEE

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Appeal from Polk County District Court  
The Hon. David M. Porter, Judge

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**PETITIONER-APPELLANT'S FINAL BRIEF**

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James C. Larew AT0004543  
LAREW LAW OFFICE  
504 East Bloomington Street  
Iowa City, Iowa 52245  
Telephone: (319) 337-7079  
Facsimile: (319) 337-7082

Email: james.larew@larewlawoffice.com

**ATTORNEY FOR PETITIONER-APPELLANT**

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## **STATEMENT OF ISSUES PRESENTED FOR REVIEW**

### **I. The District Court Erred by Ignoring Federal Law in its Determination that Appellant Linn County Auditor Joel Miller, in his Capacity as Linn County Commissioner of Elections (“Auditor Miller”) Lacked Standing to Seek Judicial Review of a Decision by the Iowa Voter Rights Commission (“Commission”) Denying Auditor Miller a Contested Case Hearing to Consider the Violation of Title III of the Federal Help America Vote Act (“HAVA”)**

*Irland v. Iowa Bd. of Med.*, 939 N.W.2d 85, 89 (Iowa 2020)

*LS Power Midcontinent, LLC v. State*, 988 N.W.2d 316, 329 (Iowa 2023)

*Richards v. Iowa Dep’t of Revenue & Fin.*, 454 N.W. 2d 573, 575 (Iowa 1990)

*Medco Behavioral Care Corp. of Iowa v Iowa Dep’t of Human Servs.*, 553 N.W. 2d 556, 562 (Iowa 1996)

*Godfrey v State*, 752 N.W. 2d 413, 417 (Iowa 2008)

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Iowa Admin. Code rs. 721—25.4, 25.8

52 U.S.C. § 21084

*Des Moines Flying Serv. v. Aerial Servs.*, 880 N.W.2d 212, 220 (Iowa 2016)

*Statutes and Statutory Construction* § 21:1, at 163 (7th ed. 2009)

Iowa Code § 4.7

*Marks v. Gessler*, 350 P.3d 883, 897-88 (Colo App. 2013)

**II. Even if, *Arguendo*, State Law Governs Whether Auditor Miller Has Standing to File a Petition for Judicial Review to Contest the Commission’s Failure to Hold a Contested Case Hearing to Consider the HAVA Complaint, the District Court Erred in Denying Auditor Miller Standing Because He Has a Specific Interest and Injury In Fact, Within the Meaning of Iowa Code Section 17A.19.**

*Irland v. Iowa Bd. of Med.*, 939 N.W.2d 85, 89 (Iowa 2020)



Iowa Code ch. 17A

*LS Power Midcontinent, LLC v. State*, 988 N.W.2d 316, 329 (Iowa 2023)

Iowa Administrative Code 721—25.2

*Richards v. Iowa Dep't of Revenue & Fin.*, 454 N.W.2d 573, 575 (Iowa 1990)

Iowa Code § 17A.19

Iowa Administrative Code 721—25

*Klein v. Iowa Pub. Info. Bd.*, 968 N.W.2d 220, 229 (Iowa 2021)

Iowa Administrative Code r. 721-25.1

Iowa Admin. Code r. 721-25.4

Iowa Admin. Code r. 721-25.8

Iowa Admin. Code § 4.4(3)

*Medco Behavioral Care Corp. v. State Dep't of Human Servs.*, 553 N.W.2d 556, 561-62 (Iowa 1996)

*Dickey v. Iowa Ethics & Campaign Disclosure Bd.*, 943 N.W.2d 34, 37 (Iowa 2020)

Iowa Admin. Code § 48A.35

*Godfrey v. State*, 752 N.W. 2d 413, 418, 420 (Iowa 2008)

*Iowa-Illinois Gas & Elec. Co. v. Iowa State Commerce*, 347 N.W.2d 423, 426-27 (Iowa 1984)

*Des Moines v. Pub. Emp't Relations Bd.*, 275 N.W.2d 753, 759 (Iowa 1979)

Iowa Code section 17A.19(10)

*Bonilla v. Iowa Bd. of Parole*, 930 N.W.2d 751, 763 (Iowa 2019)

**III. District Court Erred in Failing to Follow the Law of the Case, Having Found Jurisdiction Previously in its Mootness Determination Before Ruling That Auditor Miller Lacked Standing to File a Petition for Judicial Review to Challenge the Commission's Failure to Convene a Required Contest Case Hearing to Consider Auditor Miller's HAVA Complaint.**

*Woods v. Schmitt*, 439 N.W.2d 855, 865-66 (Iowa 1989)

*Beam v. Iowa Emp't Sec. Com.*, 264 N.W.2d 742, 744-45 (Iowa 1978)

*Citizens for Responsible Choices v. City of Shenandoah*, 686 N.W.2d 470, 473 n.1 (Iowa 2004)

52 U.S.C. § 21112(a)(2)(B)

Iowa Admin. Code r. 721—25.1(1)

*Cf. United Fire & Cas. Co. v. Iowa Dist. Court*, 612 N.W.2d 101, 103-04 (Iowa 2000)

*Richards v. Iowa Dep't of Revenue*, 414 N.W.2d 344, 349 (Iowa 1987)

*Schott v. Schott*, 744 N.W.2d 85, 88 (Iowa 2008)

*State Comprehensive Petroleum Underground Storage Tank Fund Bd. v. Federated Mut. Ins. Co.*, 596 N.W.2d 546, 552 (Iowa 1999)

## ROUTING STATEMENT

Pursuant to Iowa R. App. P. 6.1101(2)(b), 6.1101(2)(c) and 6.1101(2)(d), the Supreme Court should retain this case because it presents:

(1) substantial issues concerning which there appears to be a conflict between the District Court’s decision, below, and other published judicial decisions in Iowa on standing for judicial review of an agency decision; (2) substantial issues of first impression regarding Title III of the federal Help America Vote Act (“HAVA”); and (3) fundamental and urgent issues of broad public importance on voting integrity. Specifically, the issues requiring determination by the Iowa Supreme Court involve a holding made by the Iowa District Court for Polk County, more than three years after a Petition for Judicial Review had been filed, and two years after the District Court had ruled that the issues presented in the Petition were not moot, that the Linn County Auditor Joel Miller (“Auditor Miller”), in his capacity as the County Commissioner of Elections, lacked standing to appeal, under Iowa Code chapter 17A, a decision that had been made by the Iowa Voter Registration Commission to dismiss—without convening a contested case evidentiary hearing—a Complaint filed by Auditor Miller against the Iowa Secretary of State. The Complaint had been filed under Iowa Administrative Code rule 721—chapter 25.1(1) and had alleged that a violation of HAVA,

codified at 52 U.S.C. §§ 21081-21192, “has occurred, is occurring, or is about to occur in connection with a federal election.” The effect of the District Court’s decision—to deny standing to a County Commissioner of Elections to appeal a determination made by the Iowa Voter Registration Commission that an evidentiary contested case proceeding will not be convened, when requested by a complainant under HAVA—if not reversed, will have a significant, deleterious impact on the ability of County Commissioners of Elections, let alone any member of the public, to monitor and enforce provisions under Title III of HAVA in the State of Iowa.

### **STATEMENT OF THE CASE**

This appeal presents one issue: whether, under HAVA and rules promulgated by the Iowa Voter Registration Commission (“Commission”) to comply with federal law, a County Auditor, who, acting in his official capacity as that County’s Commissioner of Elections, has filed a Complaint with the Iowa Secretary of State, alleging a violation of Title III of HAVA by the Secretary of State, acting in the capacity as the State Commissioner of Elections, and who has been denied a request for a contested case evidentiary hearing by the Commission be convened, has standing to petition to the Iowa District Court for judicial review of that denial? In resolving the

issue of standing, the Iowa Supreme Court must determine, first, whether federal or state law provides the rule of decision.<sup>1</sup>

Nearly four years ago, Petitioner-Appellant Joel Miller, acting in his official capacity as Linn County Auditor and Commissioner of Elections (“Auditor Miller”), filed a Complaint under HAVA with Iowa Secretary of State Paul Pate (“Secretary Pate”), alleging that the I-Voters voter registration system was being administered by Secretary Pate in a manner that violated Title III of that federal law. Under HAVA, at 52 U.S.C. § 21112 (formerly codified at 42 U.S.C. § 15512) and corresponding Iowa Administrative Rules, the Commission issued a Notice of Hearing and Statement of Charges, setting a time and place for a contested case hearing. (Appellate Appendix page (“App.”) 29-30<sup>2</sup>). However, in response to a pre-contested case hearing Motion to Dismiss filed by Secretary Pate, and without convening such a proceeding, the Commission, upon a 2-1 vote,

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<sup>1</sup> As argued below, Petitioner asserts that the result is the same whether federal or state *statutory* law is applied. The critical error below, however, was the district court’s reliance on *common* law standing without recognizing the express standing elements provided by HAVA’s language, the federal statute, as incorporated into Iowa law, to have an evidentiary hearing before the Commission.

<sup>2</sup> All references to “CR” herein are to the certified record created as part of the Commission filings, and is expressly identified in the Designation of Appendix. Here, Appellant will use Appendix citations in accordance with the Appellate Rules of Civil Procedure where applicable.

dismissed the Complaint in a written Final Decision and Order, on February 10, 2020. (App. 202-207). As a part of that document, the Commission advised Auditor Miller that he could apply for a rehearing or, alternatively, that his right to judicial review was governed by Iowa Code section 17A.19 and IAC 721—25.35. (App. 207).

Having been denied a contested case hearing, Auditor Miller immediately filed a Petition for Judicial Review with the Iowa District Court for Polk County. (Petition for Judicial Review, Docket No. 1, filed 2/13/2020). In a Ruling that would issue more than *three years later*, District Court Judge David M. Porter would summarize Auditor Miller’s Complaint to the Commission as follows:

Petitioner asserted the [C]omplaint was about maintaining the integrity of Iowa’s statewide voter registration system, I-Voters. Specifically, Petitioner alleged that the I-Voters registration database does not comply with HAVA’s security requirements, in that the system does not have ‘adequate technological security measures to prevent unauthorized access’ of voter information and ‘[s]afeguards to ensure that eligible voters are not removed in error from the official list of eligible voters.’ According to Petitioner, hackers might remove, change, or modify voter registration records. Interestingly, the [C]omplaint also enclosed an open records request Petitioner made to the Secretary [of State] on July 1, and explained that Petitioner filed the HAVA [C]omplaint after he received no response to his open records requests within ten days.

(App. 240-246) (footnotes omitted).

In the course of a tortuous procedural history, lasting more than three years, no fewer than four District Court judges touched the case. After the parties had submitted written briefs on all pending issues, Judge David M. Porter heard oral arguments on July 10, 2020, but did not issue *any* ruling on *any* issue. (App. 208-233). Judge Scott D. Rosenberg, seven months later, convened a hearing and ruled, on April 26, 2021, against a motion filed by Secretary Pate arguing that judicial review had become moot due to the passage of time. (Ruling on Motion to Dismiss as Moot, Docket No. 24, 4/26/2021). Then, on March 22, 2022, Judge Heather Lauber conducted a reported status hearing, but, subsequently, made no ruling on any pending matter. (Docket No. 26, March 22, 2022). Then, Judge Paul Scott, on February 21, 2023, conducted yet another telephonic status hearing, but, again, did not rule on any pending matter.(Docket No. 30). And, finally, back to Judge Porter, without any further record, more than three years after the Petition for Judicial Review had been filed, on March 21, 2023, rendered a decision. (App. 240-246).<sup>3</sup> The Court, through Judge Porter, ruled, citing Iowa law, only, that Auditor Miller did not have standing to challenge

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<sup>3</sup> This four-year decisional history is in stark contrast to the express timeline provisions of HAVA and Iowa’s implementing regulations that guarantee a decision by the Commission within a 90-day period of filing. 52 U.S.C. § 21112(a)(2)(H); Iowa Admin. Code r. 721-25.1(2).

through judicial review the Commission’s failure to convene a contested case evidentiary hearing before issuing its Final Decision and Order dismissing Auditor Miller’s HAVA Complaint. (App. 240-246).

This Appeal challenges the District Court’s standing determination and the resulting dismissal of Auditor Miller’s Petition for Judicial Review. Auditor Miller asks the Iowa Supreme Court to reverse the District Court’s decision denying standing and to remand the matter back to the Commission with instructions that it is obligated to conduct an evidentiary contested-case hearing on the merits of Auditor Miller’s HAVA Complaint.

### **STATEMENT OF THE FACTS**

In September of 2002, Congress considered sweeping reforms to voting processes throughout the nation aimed to improve voting systems, ensure greater voter access, and add protections to the fundamental right to vote. Called the Help America Vote Act (“HAVA”), congressional deliberations in the House and Senate confirmed the importance of the federal law to assuring the efficacy of the nation’s voting processes. In a speech urging her colleagues to pass the law in the United States House of Representatives, Representative Eddie Bernice Johnson (Tex.) described the law, in part, as follows:



...The legislation [HAVA] will help protect and secure an electoral system in which all Americans are able to register as voters, remain on the rolls once registered, and vote free from harassment.

Mr. Speaker, our democracy begins and ends with the fundamental right to vote. Congress must act immediately to ensure that every American has the right to vote and to have their votes counted.

148 Cong. Rec. H6683 (daily ed. Sept. 25, 2002) (Motion to Instruct Conferees on H.R. 3295, Help America Vote Act of 2001), *available at* <https://www.congress.gov/congressional-record/www/2002/09/25/house-section/article/H6682-6>.

During the United States Senate's consideration of the Conference Report accompanying the HAVA legislation, Senators Richard J. Durbin (Ill.) and Christopher Dodd (Conn.) entered into a colloquy to clarify the purpose and intent of specific points and issues addressed by the federal legislation, including the provision requiring individual states to provide an administrative complaint procedure to consider allegations that HAVA's provisions had been violated:

[SENATOR DURBIN] ....To secure the rights afforded by this legislation....States are required to establish an administrative procedure open to **any person** who believes that a violation of any of the requirements **has occurred, is occurring or will occur**. States are free to add additional safeguards to protect these rights and are encouraged to provide the most effective remedy available to enforce them.

....

[SENATOR DODD]....[T]he conference report contains an important new administrative grievance procedure intended **to provide voters, and others aggrieved** by violation of the requirements of this Act, a timely and convenient means of redressing alleged violations....**Aggrieved persons have a legal right to file the complaint and are entitled to a hearing on the record.....[T]he state-based administrative procedure must meet basic due process requirements, including a hearing on the record if the aggrieved individual so chooses.**

148 Cong. Rec. S10488-S10516 (daily ed. Oct. 16, 2002) at S10486 (statement of Sen. Durbin) and S10511-10512 (statement of Sen. Dodd), *available at* <https://www.congress.gov/congressional-record/2002/10/16/senat-section/article/S10488-2> (**emphasis added**).

To enforce HAVA’s provisions, Congress requires that, in addition to federal enforcement processes, each state’s independent enforcement laws and administrative rules must meet certain objectives. 52 U.S.C. § 21081. For example, each state is required to develop and maintain an official interactive and computerized voter registration list. 52 U.S.C. § 21083. HAVA also requires the states to maintain their statewide voter registration lists, including deleting ineligible voters and duplicate names as required by the National Voter Registration Act of 1993—the so-called “Motor Voter Act.” 52 U.S.C. § 21083.

Pursuant to the federal mandate, under Iowa Code section 47.1(1) (2023), the Iowa Secretary of State is designated as the State Commissioner

of Elections and, in that capacity, directs a Division of Elections that is responsible for prescribing uniform election practices and procedures. Pursuant to Iowa Code section 47.1.5 (2023), the Secretary of State, acting as the State Commissioner of Elections, shall adopt rules pursuant to Iowa Code chapter 17A (the Iowa Administrative Procedures Act), for the implementation of uniform and nondiscriminatory administrative complaint procedures for resolution of grievances related to violations of Title III of HAVA. Those rules appear at Iowa Administrative Code 721—chapter 25. In state administrative complaint proceedings established to implement Title III in which one of the respondents is the State Commissioner of Elections, the presiding officer shall be a panel consisting of all members of the State Voter Registration Commission, appointed pursuant to Iowa Code section 47.8, except the State Commissioner of Elections or the State Commissioner’s designee. Iowa Code § 47.1.5 (2023).

Under Iowa Code section 47.2, each elected County Auditor serves as that county’s Commissioner of Elections. A County Commissioner of Elections is responsible for: conducting voter registration, conducting all elections within the county; maintaining records of residents who want to vote; purging records of residents who are no longer eligible to vote; and maintaining election security. Iowa Code § 47.2(1)-(7). In 2019, Auditor

Miller was serving as the duly-elected Auditor of Linn County, Iowa, and, by operation of law, also as the County's Commissioner of Elections pursuant to Iowa Administrative Code 721—chapter 25.

Auditor Miller, in his capacity as the Linn County Commissioner of Elections, was responsible for assuring the accuracy and security of the voter registration lists in that jurisdiction. (App. 22-25). On July 16, 2019, Auditor Miller filed a Complaint with the Office of the Secretary of State, alleging violations of Title III of HAVA by Secretary of State Paul Pate, “has occurred, is occurring, or is about to occur in connection with a federal election.” 52 U.S.C. § 21112(a)(2); Iowa Admin. Code r. 721—25.1(1). (App. 22-25). The Complaint focused on the integrity of Iowa's statewide voter registration system, I-Voters. (*Id.*) Auditor Miller alleged that the I-Voters voter registration database maintained by Secretary Pate did not comply with HAVA's security requirements, such as providing “adequate technological security measures to prevent the unauthorized access” to I-Voters, and “safeguards to ensure that eligible voters are not removed in error from the official list of eligible voters.” 52 U.S.C. § 21083(a)(3), (a)(4)(B). (*Id.*)

On August 19, 2019, the Iowa Secretary of State’s office notified the Iowa Voter Registration Commission (“Commission” or “VRC”)<sup>4</sup> of the Complaint and that the filing had been “accepted” pursuant to 721 IAC 2.5(3). Also, since the Complaint had been lodged against Secretary Pate, the representative of that office on the VRC abstained from the proceedings. *See* Iowa Code §§ 47.1(5), 47.8(5).

On November 6, 2019, pursuant to applicable federal law and state administrative rules, the Commission issued a “Notice of Hearing and Statement of Charges,” (“Notice”) setting a **contested case hearing** for December 9, 2019 before the Commission.<sup>5</sup> (App. 29-30). It ordered Secretary Pate to file an Answer within ten days, complete with all information required by the Iowa Administrative Code. *See* Iowa Admin.

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<sup>4</sup> Because Auditor Miller’s Complaint named as Respondent the Secretary of State, who serves as the state commissioner of elections, the Iowa Voter Registration Commission, minus the Secretary of State’s designee, served as presiding officer in the complaint proceedings. Iowa Code § 47.8(5); Iowa Admin. Code r. 721—25.7(2). *See also* the August 19, 2019 letter from Heidi Burhans, State Director of Elections, to Commissioner W. Charles Smithson (App. 26-28).

<sup>5</sup> The Notice stated, “The Complainant is responsible for proving by a preponderance of the evidence that a violation occurred.” (App. 30). The Amended Notice clarified “that the complaint is not limited to past actions,” and provided that “The Complainant is responsible for establishing by a preponderance of the evidence any violations.” (App. 32).

Code r. 721—25.6 (requiring each Respondent to file an Answer within ten days of service of notice of the proceedings).

One day later, on November 7, 2019, the Commission issued Amended Notice to clarify that Auditor Miller’s Complaint, subject to the forthcoming contested case hearing, *had not been limited to past actions*. (App. 31-32) (emphasis added).

On November 8, 2019, Secretary Pate, in lieu of filing an Answer, filed a Motion to Dismiss, arguing that Auditor Miller had failed to allege a violation of Title III regarding a federal election, and had failed to state a claim upon which relief could be granted. (App. 33-45).

On November 27, 2019, Auditor Miller filed a response to Secretary Pate’s Motion to Dismiss. (App. 51-176). Captioned “Complainant’s Answer to Respondent’s Motion to Dismiss a Resistance and an Answer to the Motion,” Auditor Miller attached a series of Exhibits consisting of multiple documents.<sup>6</sup> (App. 47-50; App. 51-176).

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<sup>6</sup> Auditor Miller initially represented himself in the proceeding before the Commission, but was represented by Counsel at the December 30, 2019 hearing. (App. 202-207, n. 3). Counsel filed a written Notice of Appearance on January 16, 2020. (App. 190).

On December 5, 2019, Secretary Pate filed a document styled, “Respondent’s Reply to Complainant’s Resistance to Motion to Dismiss.” (App. 177-182).

On December 6, 2019, Auditor Miller responded with a document captioned, “Sur-Reply to Respondent’s Motion to Dismiss.” (App. 183-186).

On December 30, 2019, the Commission convened a public hearing and heard arguments from the parties related to Secretary Pate’s Motion to Dismiss, only, and, expressly, not as to the merits of the Complaint.<sup>7</sup> (App. 28). After public deliberation, the Commission decided to take the matter under advisement and permitted the parties to file closing briefs related only to the Motion to Dismiss. (App. 28; App. 187-188).

On January 16, 2020, the parties filed their final briefs. (Miller’s Final Brief; CR-172; Secretary Pate’s Post-Hearing Brief; CR-178). Auditor Miller also, on that date, citing Iowa Administrative Code sections 721—25.4, .8 and .10, and corresponding Iowa Code provisions (Iowa Code chapter 17A, and Iowa Code section 39A.47), filed a formal Request for Hearing on the record with respect to his Complaint, noting that the request

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<sup>7</sup> The original December 9, 2019 hearing date was rescheduled to December 30, 2019. (App. 202-207).

was being filed “to assure that there is no factual ambiguity” as to the issue of his right to, and request for, a hearing. (App. 189; App. 191-196).

On January 17, 2020, the Commission reconvened and, without taking any evidence or testimony, deliberated on the Motion to Dismiss, only. (App. 28). Its members ruled in favor of the Motion to Dismiss on a 2-1 vote, thereby dismissing Auditor Miller’s Complaint. (App. 28).

Three weeks later, on February 10, 2020, the Commission issued written decision, styled, “Final Decision and Order.” (App. 202-207). In it, the majority of the Commission went well beyond the issues presented in the Motion to Dismiss and, without the benefit of a public hearing, in effect, weighed the limited evidence that had been placed before it in the initial proceedings, and then ruled on the merits of the Complaint itself. The majority concluded that “adequate technical security measures” exist to prevent unauthorized access to the I-Voters voter registration database maintained by the Iowa Secretary of State, and that “[t]o simply assert that a hack may happen in the future and thus a violation of HAVA ‘is about to occur’ is not sufficient.” (*Id.*). In addition, the majority stated, “The fact that the [Secretary of State] has received funding and otherwise has made it publicly known that cyber security is an issue does not make it a HAVA violation.” (*Id.*). In the opinion of the majority of Commissioners, Auditor



Miller’s Complaint “leads to speculation as opposed to fact.” (*Id.*).

Therefore, “a majority of the VRC Commissioners determined based on the language of the laws and the wording of the Complaint, that even if all facts were true there would not be a preponderance of evidence resulting in a violation of Title III of HAVA.” (*Id.*). At the close of its written decision, the Commission advised Auditor Miller of his right to judicial review under Iowa Code section 17A.19 and Iowa Administrative Rule 721—25.35. (App. 202-207).

On February 13, 2020, Auditor Miller filed a Petition for Judicial Review (“Petition”) with the Iowa District Court in and for Polk County, stating that the Commission’s decision to uphold Secretary Pate’s motion to dismiss had been improper. (Petition, Docket No. 1). In his Petition, Auditor Miller alleged: (1) that he had been aggrieved or adversely affected by a final agency action, within the meaning of Iowa Code section 17A.19(1); (2) that the Commission had violated federal law and its own administrative rules, thus committing legal error, when it had denied Auditor Miller a hearing on his Complaint; and (3) that the Commission had acted in an unreasonable, arbitrary and capricious manner, and had abused its discretion and had erred as a matter of law when it had summarily dismissed Auditor Miller’s Complaint without holding a contested case hearing. (Petition).

On February 17, 2020, the District Court issued an Order establishing a Schedule for Conduct of Proceedings and setting a date for a hearing on the Petition nearly four months later, on July 10, 2020. (App. 202-207).

On March 6, 2020, the Commission filed an Answer to Auditor Miller's Petition ("Answer"). (Answer, Docket No. 7).

On April 13, 2020, the certified agency record was filed with the District Court ("Certified Record"). (Certified Record, Docket No. 12).

On April 23, 2020, Auditor Miller filed a pre-hearing Brief ("Petitioner's Pre-Hearing Brief"). (Petitioner's Pre-Hearing Brief, Docket No. 13).

On June 12, 2020, Secretary Pate filed a pre-hearing Brief ("Respondent's Pre-Hearing Brief"). (Respondent's Pre-Hearing Brief, Docket No. 16).

On June 24, 2020, Auditor Miller filed a pre-hearing Reply Brief ("Petitioner's Pre-Hearing Reply Brief"). (Petitioner's Pre-Hearing Reply Brief, Docket No. 17).

On July 10, 2020, an in-person, reported hearing was convened by Judge David M. Porter. Legal arguments were presented by counsel. No exhibits were offered. No testimony was presented. (App. 208-233).

On February 11, 2021, eight-months post-hearing, and no Ruling yet issued by the District Court on Auditor Miller’s Petition, the Commission filed a Motion to Dismiss as Moot (“Motion to Dismiss”). (Motion to Dismiss, Docket No. 19).

On February 16, 2021, Auditor Miller filed a Resistance to the Motion to Dismiss as Moot (“Resistance”). (Resistance, Docket No. 21).

On March 5, 2021, a hearing was convened by the Iowa District Court, this time presided by Judge Scott D. Rosenberg, to consider the Commission’s Motion to Dismiss as Moot. (Court Reporter Memorandum and Certificate, Docket No. 23).

On April 26, 2021, Judge Rosenberg denied the Motion to Dismiss as Moot, stating, in part, that “HAVA and the Iowa administrative procedures provide Miller with the right to pursue injunctive relief with respect to a past election” and that “**any person** who believes there is a violation of any provision of subchapter III [of 52 U.S.C. § 21112(a)(2)(B)] (including a violation *which has occurred*, is occurring, or is about to occur) may file a complaint.” (**bold emphasis** added; *italics* in original). *See* Ruling on Respondent’s Motion to Dismiss, Docket No. 24. The District Court did not rule on the core issue presented by Auditor Miller’s Petition for Judicial Review, however—that, is, whether Auditor Miller had been wrongfully

denied a contested case hearing by the Commission on the merits of his Complaint.

On March 22, 2022, now more than two years after it had been filed, as no Ruling on Auditor Miller's Petition had been issued, he filed a Motion for Status Conference. A hearing on that motion was held on April 22, 2022, this time, Judge Heather Lauber, presiding. (Hearing, Docket No. 26). No additional arguments or evidence were submitted to the District Court. The parties agreed that the record originally presented to Judge Porter represented the entirety of the record to determine whether an evidentiary contested case hearing before the Commission should have been held before the Complaint had been dismissed.

On October 21, 2022, as more than two and one-half years had passed since Auditor Miller's filing of his Petition, and, as no Ruling had been issued, he filed a second Motion for Status Conference. (Motion, Docket No. 27). A telephonic hearing was held before Judge Paul Scott on March 21, 2023. (Hearing, Docket No. 30).

Finally, on March 27, 2023, approaching four years since Auditor Miller had filed his original Complaint, and more than three years after he had filed his Petition for Judicial Review, the District Court, Judge David M. Porter, once again, presiding, citing state law, only, issued an Order denying

the Petition for Judicial Review under which Auditor Miller had challenged the Commission's refusal to conduct a contested case hearing. (App. 240-246). The District Court's dismissal had not been based on the merits of Auditor Miller's judicial review averment that he had been wrongfully denied a contested case hearing before the Commission to determine the merits of his Complaint—but, rather, based on the Court's determination that Auditor Miller had lacked standing to seek judicial review.

It is from this final Order that Auditor Miller has filed this appeal.

## **ARGUMENT**

### **I. The District Court Erred by Ignoring Federal Law in its Determination that Auditor Miller Lacked Standing to Seek Judicial Review of a Decision by the Commission Denying Auditor Miller a Contested Case Hearing to Consider the Violation of HAVA**

#### **A. Preservation of Error**

Auditor Miller preserved error on this issue in briefing below. *See* Petitioner's Brief on Judicial Review, pp. 7-8, Docket No. 1; Petitioner's Reply Brief on Judicial Review, pp. 3-5, Docket No. 17; Petitioner's Resistance to Respondent's Motion to Dismiss as Moot, p. 3, Docket No. 21; App. 216-217, 229-232.

## **B. Standard of Review**

A district court’s dismissal of a petition for judicial review is reviewed for correction of errors at law. *Irland v. Iowa Bd. Of Med.*, 939 N.W.2d 85, 89 (Iowa 2020) (citation omitted). “We apply the standards set forth in the Administrative Procedure Act, Iowa Code ch. 17A, to determine whether our conclusions are the same as those of the district court.” *Id.* Similarly, the district court’s dismissal of a case for lack of standing is reviewed for errors at law. *LS Power Midcontinent, LLC v. State*, 988 N.W.2d 316, 329 (Iowa 2023) (citation omitted).

## **C. HAVA Provides Express Language of Standing to Hold an Evidentiary Hearing**

In its Ruling, the District Court determined that Auditor Miller “does not have standing to bring this claim.” (Ruling, p. 6). Citing *Richards v. Iowa Dep’t of Revenue & Fin.*, 454 N.W. 2d 573, 575 (Iowa 1990), the Court reasoned that, “[a] person may be a proper party to agency proceedings, but not have standing to obtain judicial review.” (App. 236). In denying Auditor Miller’s standing to seek judicial review of the Commission’s dismissal of his HAVA Complaint without first conducting a contested case proceeding, the District Court cited the Iowa Administrative Procedures Act, Iowa Code chapter 17A (“IAPA”), and several Iowa Supreme Court cases describing the standing doctrine with respect to that

statute. (App. 236-237): *Medco Behavioral Care Corp. of Iowa v Iowa Dep't of Human Servs.*, 553 N.W. 2d 556, 562 (Iowa 1996); and *Godfrey v State*, 752 N.W. 2d 413, 417 (Iowa 2008). Under these cases, according to the District Court, the IAPA requires two elements to establish standing to challenge an administrative action through judicial review: “the complaining party must: (1) have a specific, personal, and legal interest in the litigation; and (2) the specific interest must be adversely affected by the agency action in question.” (App. 237) (quoting *Medco*, 553 N.W.2d at 562). No reference was made to federal statutory language or case law applicable to the administrative proceeding with respect to the standing doctrine in either of the cases cited. This was error.

Title III of HAVA requires each state to implement a single statewide voter registration list maintained and administered at the state level. 52 U.S.C. § 21083 (formerly 42 U.S.C. § 15483). Further, each state that receives federal funding to implement HAVA is required to create a state-based administrative process to address alleged violations of Title III of HAVA. 52 U.S.C. § 21112 (formerly 42 U.S.C. §15512). The Iowa Secretary of State’s office has promulgated conforming administrative rules, published at Iowa Administrative Code r. 721—25, to establish a process to review and address alleged Title III violations, such as the allegations set

forth in Auditor Miller's Complaint served on the Secretary of State on August 12, 2019. (App. 26-28).

For all times material hereto, Auditor Miller, in his capacity as Linn County Commissioner of Elections, was responsible for conducting voter registration, conducting all elections within the county, maintaining records of voting residents, and purging records. Iowa Code § 47.2(1)-(7). He was concerned as to whether HAVA funds awarded to the State of Iowa by the federal government were being used in a manner consistent with HAVA's purposes related to voter registration lists. (App. 22-25). After unsuccessful attempts to communicate with Secretary Pate, who also serves as the State Commissioner of Elections, on August 12, 2019, about this concern, Auditor Miller served a HAVA Complaint upon Secretary Pate, alleging violations of Title III of HAVA. (App. 22-25). Secretary Pate, in turn, turned the Complaint over to the Iowa Voter Rights Commission ("Commission"). (App. 26-28).

On November 6, 2019, the Commission issued a Notice to Auditor Miller, setting a time and place for a contested case hearing. (App. 29-30). One day later, in an Amended Notice, the Commission re-affirmed the time and place for the contested case hearing, and also instructed that Auditor



Miller’s Complaint was not limited to past actions. (App. 31-32). Despite this express notice, no contested case hearing was ever held.

Instead, Secretary Pate filed a Motion to Dismiss the Complaint. (App. 33-45). Without convening a contested case hearing, the Commission dismissed the Complaint in a Final Decision and Order, dated February 10, 2020. (App. 202-207). In that document, the Commission advised Auditor Miller that, “[a]pplications for rehearing are governed by administrative rule 721—25.31 and judicial review as set out in Iowa Code section 17A.19 and administrative rule 721—25.35.” (App. 206). Administrative rule 721—25.35(17A), in relevant part, states as follows:

**Judicial review.** Judicial review of the final decision may be sought in accordance with the terms of Iowa Code chapter 17A....These rules are intended to implement 52 U.S.C. 21112(a)(1).

(*Id.*). That federal code provision provides that if a State receives any payment under the HAVA program, “the State shall be required to establish and maintain State-based administrative complaint procedures which meet the requirements of paragraph (2).” 52 U.S.C. § 21112(a)(1). Pursuant to Paragraph 2 of that same federal code provision, express language with respect to the issue of standing that is broader than the language of the IAPA or the Iowa Supreme Court cases interpreting that Iowa statute cited by the District Court is set forth. 52 U.S.C. § 21212(a)(2)(B).

Specifically, that federal provision requires that a state’s HAVA complaint procedures, which must be uniform and nondiscriminatory, must also be available to “...**any person who believes that there is a violation of any provision of subchapter III of this chapter (including a violation which has occurred, is occurring, or is about to occur)**[.]” 52 U.S.C.

§21212(a)(2)(B) (emphasis added). Moreover, Paragraph 2 also requires that “[a]t the request of the complainant, **there shall be a hearing on the record.**” 52 U.S.C. § 21112(a)(2)(E) (emphasis added). The HAVA federal provisions describe express and compact timelines for completing the complaint process: a final determination must be made within “the 90-day period which begins on the date the complaint is filed, unless the complainant consents to a longer period for making such a determination.” 52 U.S.C. § 21112(a)(2)(H). No such request for more time or consent to the same was given in this matter.

There is a parallel provision in the administrative rules, appearing at rule 721—25.2, which expressly adopts language relating to the federal requirement. It states, in relevant part, as follows:

**This complaint procedure is limited to allegations of violations of Title III in a federal election. Any person who believes that there is a violation of any provision of Title III, including a violation which has occurred, is occurring, or is about to occur, by any state or local official may file a complaint under this chapter. The complainant may either submit a complaint on a form provided by the**

state commissioner of elections or in any other form that complies with this rule.

(App. 6) (emphasis added). If a hearing on the record is requested by a Complainant, it must be conducted pursuant to rules outlined in administrative rules found at 721—25.23 through 25.26 (17A). (App. 14-19).

The legislative intent is the determinative factor in interpreting a statute. *Sanon v. City of Pella*, 865 N.W.2d 506, 511 (Iowa 2015) (citation omitted). “In determining legislative intent, we look at the words used by the legislature when it enacted the statute.” *Id.* Legislative history is also “instructive of intent.” *Id.*

The District Court erred in ignoring the express language of the governing statute and its implementing regulation, as well as the legislative history. The word “shall” imposes a duty. Iowa Code § 4.1(30)(a). Auditor Miller requested a hearing on the record, as required by federal law. 52 U.S.C. § 21112(a)(2)(E); *see also* 148 Cong. Rec. S10511-10512 (daily ed. Oct. 16, 2002) (statement of Sen. Dodd) (“[T]he state-based administrative procedure must meet basis due process requirements, including a hearing on the record if the aggrieved individual so chooses.”). Iowa law has been written to conform to these federal mandates. (App. 7-8). While Iowa law could exceed the minimum requirements of federal law, it cannot go below

those minimum protections. 52 U.S.C. § 21084. The Commission failed to comply with applicable federal law when it dismissed Auditor Miller’s Complaint without a contested case hearing.

A “hearing on the record” required by 52 U.S.C. § 21112(a)(2)(E) has no meaning if it does not include the ability to present evidence of the alleged violations, and determine whether a violation “has occurred, is occurring, or is about to occur[.]” 52 U.S.C. § 21112(a)(2)(B). Without a hearing to present evidence described in the complaint, the words of the statute are rendered meaningless, which is directly counter to legislative intent. *Des Moines Flying Serv. v. Aerial Servs.*, 880 N.W.2d 212, 220 (Iowa 2016) (citing 1A Norman J. Singer & Shambie Singer, *Statutes and Statutory Construction* § 21:1, at 163 (7th ed. 2009)). The District Court’s determination effectively “read out what is in a statute as a matter of clear English[.]” *Id.*

Seen in this light, the District Court’s determination that Auditor Miller does not have standing to challenge the Commission’s dismissal of Auditor Miller’s HAVA Complaint without a contested case hearing precludes exactly the kind of review process which the United States Congress intended and promised, as expressed in HAVA’s language: a citizen has a right to an evidentiary hearing when a Complaint is filed by

“any person who believes that there is a violation of any provision of subchapter III...(including a violation which has occurred, is occurring, or is about to occur).” Auditor Miller, a citizen alleging that the security or integrity of a voter registration list is, or in the future, may be, threatened, has these rights and the Commission failed to recognize them. The District Court’s denial of Auditor Miller’s standing to seek judicial review of the Commission’s denial of these rights was in error as a matter of federal law. The plain meaning of the federal statute, as required to be implemented by state law, was rendered meaningless by the District Court’s Ruling.

The requisites for engaging the complaint procedure to vindicate federal voting rights *by any person* does not make reference to, nor require, compliance with the standing doctrine as applied by the District Court, below, to controversies arising under state common law and administered by state executive agencies. To the extent that it may be argued that federal and state provisions regarding who is authorized to file a complaint—including exercising the express right to judicial review—conflict with traditional rules of standing under the Iowa Administrative Procedures Act, it is because the Iowa common law rule is narrower than, and inconsistent with, the federal HAVA statute and the Iowa administrative rules established so that the State can qualify for federal money under that statute. Moreover, the state

regulations expressly recognize the ability to seek judicial review of a HAVA complaint, as required by federal law. (App. 19).

Similarly, Auditor Miller’s right to have his Complaint submitted to a contested case hearing if he requests one cannot be reasonably disputed as a matter of federal law. *See* 52 U.S.C. § 21112(a)(2)(E) (“At the request of the complainant, there shall be a hearing on the record.”). Indeed, even the title of the code provision demonstrates its purpose: “Establishment of State-based administrative complaint procedures to remedy grievances.” 52 U.S.C. § 21112. The District Court’s order does the opposite: failing to follow the state administrative complaint procedures and therefore completely nullifying any ability to remedy a grievance. Where there is no hearing to prove a grievance, it cannot be even fully determined, let alone remedied. Administrative rule 721—25.4 affirms the federal right: “a hearing on the complaint will be conducted, if requested.” It is not disputed that the Commission, upon review of the Complaint, issued a Notice of a contested case hearing. (App. 29-30). Nor is it disputed that Auditor Miller expressly requested that a hearing on the record be held. (App. 189). Nor is it disputed that the Final Decision and Order, dated February 10, 2020, was a final agency action. (App. 202-207). Nor is it disputed that Auditor Miller was advised by the Commission, in its rejection of his Complaint, without

benefit of a contested case hearing, of his right to judicial review. (App. 207). Such an advisement was perfectly consistent with Iowa Code chapter 17A and IAC chapter 721—25. The District Court’s order failing to recognize the same was in error.

Even if it could be argued that either the eligibility to file a Complaint, or a Complainant’s right to have the substance of that Complaint heard at a contested case hearing convened by the Commission, or a Complainant’s right to have the Commission’s contested case hearing decision subject to judicial review, were narrower under Iowa common law than under federal law, under such a hypothetical scenario, the inconsistencies would be resolved in accordance with the specific federal statute (and corresponding specific state regulations). The statutes should be construed to give both effect, but if there is a conflict between provisions, the “special or local provision prevails as an exception to the general provision.” Iowa Code § 4.7. Therefore, the specific HAVA right and its implementing state regulations must be given effect. *See also Marks v. Gessler*, 350 P.3d 883, 897-88 (Colo App. 2013) (holding that a dismissal of a HAVA complaint without a hearing based on lack of standing was in error because federal HAVA law gave broader standing than the Colorado statute and the federal statute required a hearing). Indeed, whether considered under federal or state

law implementing the same, the ability to redress the issues raised, or standing, is clearly contained within the statute itself. Therefore, any broader requirement of standing, particularly in courts of general jurisdiction like Iowa state district courts, imposes an additional requirement that is not included in the statute. *See Iowa Citizens for Cmty. Improvement & Food & Water Watch v. State*, 962 N.W.2d 780, 790 (Iowa 2021) (holding that “[w]ith state courts, standing is a self-imposed rule of restraint” although it does not make it less real than in federal court). In other words, it is essentially a double standing requirement to seek judicial review when the argument below was that the Commission had failed to even hold the minimal hearing requirements of federal law, as implemented by state regulations. The District Court essentially imposed layers of standing requirements on the review of the initial requirement that one be allowed to have an evidentiary hearing in the first place. Such double standing requirements do not exist anywhere in the governing law, and therefore cannot be countenanced.

Under these facts, and the federal law of standing, as incorporated into IAC chapter 721—25, it was clear legal error for the District Court to decide that Auditor Miller lacked standing to file a Petition for Judicial Review, under which he had challenged the Commission’s dismissal of his



Complaint, without first conducting a required contested case proceeding. The District Court's decision should be reversed, with instructions to the Commission to hold a contested case hearing, as required.

**II. Even if, *Arguendo*, State Common Law Governs Whether Auditor Miller Has Standing to File a Petition for Judicial Review to Contest the Commission's Failure to Hold a Contested Case Hearing to Consider His HAVA Violation Complaint, the District Court Erred in Denying Auditor Miller Standing Because He Has a Specific Interest and Injury In Fact, Within the Meaning of Iowa Code Section 17A.19.**

**A. Preservation of Error**

Auditor Miller preserved error on this issue in multiple filings below. *See* Petitioner's Brief on Judicial Review, pp. 7-8, Docket No. 1; Petitioner's Reply Brief on Judicial Review, pp. 3-5, Docket No. 17; Petitioner's Resistance to Respondent's Motion to Dismiss as Moot, p. 3, Docket No. 21; App. 208-233.

**B. Standard of Review**

A district court's dismissal of a petition for judicial review is reviewed for correction of errors at law. *Irland*, 939 N.W.2d at 89. "We apply the standards set forth in the Administrative Procedure Act, Iowa Code 17A, to determine whether our conclusions are the same as those of the district court." *Id.* Similarly, the district court's dismissal of a case for

lack of standing is reviewed for errors at law. *LS Power Midcontinent, LLC v. State*, 988 N.W.2d 316, 329 (Iowa 2023) (citation omitted).

### **C. Auditor Miller Had Standing Under any Measure**

The District Court erred when, applying its interpretation of Iowa law, it ruled that Auditor Miller lacked standing to file a Petition for Judicial Review to contest the Commission's denial of his right to a contested case hearing to have the merits of his HAVA Complaint determined. (App. 240-246). The District Court agreed that Auditor Miller has a specific and legal interest in the matter, under the first element of standing, but determined that he did not have an injury, the second element of standing. (App. 243). As earlier argued, Auditor Miller believes that his right to access a contested case hearing, and his right to invoke judicial review of the Commission's denial of that contested case right to the Iowa District Court, are assured as a matter of federal statutory law. However, assuming for the purpose of argument, that these rights are defined as a matter of an additional state common law requirement, and not the federal statute, Auditor Miller believes it was error for the District Court to rule that he lacked standing to file a Petition for Judicial Review of the Commission's dismissal of his HAVA Complaint.

The merits of the allegations of Auditor Miller's HAVA Complaint are not at issue. At issue is Auditor Miller's right of access to the District Court for the purpose of reviewing the Commission's failure to conduct a contested case hearing in response to filing of his HAVA Complaint with the Secretary of State. The impact of the District Court's denial of access to judicial review was to, in effect, affirm the Commission's dismissal of that Complaint upon Secretary Pate's pre-hearing motion to dismiss. That is no process to remedy a grievance, let alone due process.

In its state-common-law-based analysis, the District Court made no reference to Iowa's administrative code's definition of standing with respect to the filing of a complaint alleging a violation of Title III of HAVA. (App. 6) (**"Any person who believes that there is a violation of any provision of Title III, including a violation which has occurred, is occurring, or is about to occur, by any state or local official may file a complaint under this chapter."**) Nor was there any acknowledgment of a complainant's Iowa Administrative Code's entitlement to a hearing to review the complaint upon request. (App. 7) ("...a hearing on the complaint will be conducted, if requested."). Nor did the District Court recognize a complainant's right to judicial review of an adverse determination by the Commission, as instructed to him in the Commission's final disposition of his Complaint

(“Applications for rehearing are governed by administrative rule 721-25.31 and judicial review as set out in Iowa Code section 17A.19 and administrative rule 721-25.35”), and as stipulated in the Iowa Administrative Code chapter 17A. (App. 207).

Rather, the District Court relied on *Richards v. Iowa Dep’t of Revenue & Fin.*, 454 N.W.2d 573, 575 (Iowa 1990), for the proposition that a person may be a proper party to a state agency proceeding, but may not have standing to obtain judicial review. (App. 204). In fact, the *Richards* Court determined that, by statute, persons aggrieved by agency action *were* entitled to judicial review unless “expressly provided otherwise.” Iowa Code § 17A.19. And, in that instance, since the statute failed to expressly preclude judicial review of orders upholding a tax exemption, the presumption of reviewability of agency action controlled. *Id.* at 575. Here, too, there is no express preclusion of judicial review of an agency’s action to prevent a contested case proceeding to evaluate the merits of a HAVA Complaint in IAC 721—25. To the contrary, the plain meaning of the rules in that Administrative Code chapter, coupled with the Commission’s express reference to Auditor Miller’s right to judicial review as set forth in final decision, all point to his standing to file a Petition for Judicial Review. By any measure, Auditor Miller is a person “who has exhausted all adequate

administrative remedies and who is aggrieved or adversely affected by any final agency action” as required by the statute. Iowa Code § 17A.19(1); *see also Klein v. Iowa Pub. Info. Bd.*, 968 N.W.2d 220, 229 (Iowa 2021) (reviewing same statutory provision and noting that rejecting a complaint at the outset leaves the complainant without further recourse).

Auditor Miller’s complaint was dismissed without any of the basic procedures promised by even the Iowa Administrative Code r. 721-25.1:

The procedure is available to any person who believes that a violation of any provision of Title III of the Help America Vote Act of 2002, Public Law 107-252, 42 U.S.C. 15481-15485, has occurred, is occurring, or is about to occur in connection with a federal election.

Similarly, Iowa state statutory law sets forth the ability of a Complainant to file written submissions and documentary evidence concerning the complaint “and under which a hearing on the complaint will be conducted, if requested.” (App. 7). Most critically, Iowa law anticipates, consistent with the federal statute, that when a Complainant requests a hearing on the record, or “the presiding officer determines that an evidentiary hearing will assist in resolution of outstanding factual disputes” then it is not determined based on written submissions. (App. 8). Therefore, by state statutory law, where the Complainant requests a hearing (or a hearing officer determines such would be helpful), an evidentiary hearing should be provided. *Id.* The District Court failed to follow the standards set forth in state statutory law in

guaranteeing a hearing upon request to an aggrieved person. The standing of Auditor Miller is contained in federal and state statutory law implementing the same, and if one cannot challenge on judicial review the Commission’s failure to even provide these minimal guarantees, none of these statutes have any meaning, or enforceability. This is not the just and reasonable result anticipated by the statute. Iowa Code § 4.4(3) (setting forth the presumption that a “just and reasonable result is intended” in interpreting statutory language).

Similarly, the District Court’s standing analysis, based on its interpretation of Auditor Miller’s interests and injury—but without any reference to the administrative code’s assurance of standing to “any person who believes there is a violation” of Title III including a violation “which has occurred, is occurring, or is about to occur” (App. 6) (emphasis added) or the entitlement of any Complainant who requests one to have the Complaint’s allegations made subject to a contested case hearing (App. 7)—is without merit. As juxtaposed to Iowa law’s recognition of the right of “any person” to file a HAVA Complaint “who believes” that there has been a violation of “any provision of Title III,” including one that “has occurred, is occurring or is about the occur,” the District Court finds the interest of the elected Commissioner of Elections of Iowa’s second largest county to carry

out his statutory duties to assure that voter laws are enforced is “an admirable interest, [but] not one that is sufficient to establish the personal injury required for standing.” (App. 206). And indeed, the District Court cited a case that described standing of an unsuccessful bidder for a DHS contract being based on language of the statute, which is exactly the situation here. *See Medco Behavioral Care Corp. v. State Dep't of Human Servs.*, 553 N.W.2d 556, 561-62 (Iowa 1996) (“Standing is derived from Iowa Code chapter 249A. The final decision of DHS awarding the contract (and its disposition of any resulting appeals) falls within the broad residual category of administrative action known as ‘other agency action.’”).

It is clear that Iowa law supports, and does not deny, Auditor Miller’s contention that he has standing to file a petition for judicial review to determine whether the Commission’s dismissal of his HAVA Complaint, without access to a contested case hearing, was lawful. “[T]o have standing to challenge an administrative action in court under the [Iowa Administrative Procedure Act], the complaining party must (1) have a specific, personal, and legal interest in the litigation; and (2) the specific interest must be adversely affected by the agency action in question. *Klein v. Iowa Pub. Info. Bd.*, 968 N.W.2d 220, 235 (Iowa 2021) (internal quotations and citations omitted). This is not a situation, as in *Dickey v. Iowa Ethics &*

*Campaign Disclosure Bd.*, 943 N.W.2d 34, 37 (Iowa 2020), where the Supreme Court held that there was no standing to seek judicial review of a decision in campaign finance where the petitioner already had the relevant information. This is a situation where Auditor Miller could not even obtain the hearing guaranteed to him upon his request for the same to determine whether a violation of HAVA had occurred, let alone judicial review of the Commission’s denial of his right to an evidentiary hearing. Auditor Miller can demonstrate both elements of standing in the specific interest in the litigation, and that it was adversely affected.

*1. Specific Interest*

Auditor Miller filed his Complaint in his official capacity as Linn County’s elected Commissioner of Elections. (App. 22-25). In that capacity, he is responsible for voter registration records of that county. Iowa Code § 48A.35. As County Auditor, he is required to pay a fee to the State for the maintenance of the I-Voters system. (12/3/2019 VRC Meeting Recording, pt. 1, at 29:32-30:23; App. 28). The issues identified in Auditor Miller’s Complaint directly relate to his ability to comply with his statutory duties as County Auditor. Accordingly, he has a “specific personal or legal interest,” distinguishable from the general public, in the Commission’s decision dismissing his Complaint without access to a contested case proceeding.



*Godfrey v. State*, 752 N.W. 2d 413, 418, 420 (Iowa 2008). Indeed, the District Court agreed that this first element had been met by Auditor Miller. (App. 205). Auditor Miller was specifically interested in compliance with HAVA as a County auditor (though HAVA does not require him to have such a specific interest), and having been denied his right to a hearing under it, had more than a “concern of all members of the community as a whole.” *Iowa-Illinois Gas & Elec. Co. v. Iowa State Commerce*, 347 N.W.2d 423, 426-27 (Iowa 1984) (citation omitted).

## 2. *Injury in fact*

The District Court erred in determining that Auditor Miller did not suffer an injury in fact. (App. 205-207). Auditor Miller has been injuriously affected by the Commission’s decision to dismiss his Complaint without convening a contested case proceeding. The Commission’s failure to convene a contested case hearing and render a decision, supported by the evidence and based on the merits, resulted in a “specific and perceptible harm.” *Godfrey*, 752 N.W.2d at 419. Namely, Auditor Miller has been deprived of the opportunity fully to litigate the question of whether the State is in compliance with Title III of HAVA, which directly and substantively affects Auditor Miller’s ability to carry out his statutory duties. The District Court limited and characterized Auditor Miller’s complaints as only general

issues, in finding that the only complaint he had was being “deprived of the opportunity to fully litigate the question of whether the State is in compliance with Title III of HAVA.” (App. 205). Auditor Miller also described the injury to his ability to carry out his statutory duties, which is a direct injury in fact. Moreover, the specific injury is from the decision of the Commission itself, which is exactly what Auditor Miller described: the Commission’s failure to comply with HAVA and hold a hearing (and get to the merits of his complaint with respect to violation of Title III of HAVA). In its early articulation of the standing requirement, the Iowa Supreme Court made this correlation clear, citing the Connecticut Supreme Court and holding the second prong required “the party claiming aggrievement must successfully establish that this specific personal and legal interest has been **specialy and injuriously affected by the decision.**” *Des Moines v. Pub. Emp’t Relations Bd.*, 275 N.W.2d 753, 759 (Iowa 1979) (emphasis added). That is the language that directly tracks with Iowa Code section 17A.19(10) (which is also anticipated in HAVA and state implementing regulations, described above), as substantial rights have been prejudiced. Indeed, Auditor Miller described one of the express scenarios anticipated by the Iowa General Assembly in enacting the judicial review statute: prejudice to substantial rights based “upon a procedure or decision-making process

prohibited by law or was taken without following the prescribed procedure or decision-making process.” Iowa Code § 17A.19(10)(d). Auditor Miller described the Commission’s failure, after promising a contested case hearing, to actually hold one on his HAVA complaint. (Petition for Judicial Review). That is exactly the injury from the Commission’s decision anticipated as requiring judicial review, and for which he must therefore have standing to pursue.

Auditor Miller, by virtue of his position as Linn County’s elected Auditor and the statutory duties arising from that position, alleges “some type of injury different from the population in general.” *Godfrey*, 752 N.W. 2d at 420. The population in general did not file a Complaint and seek to have a contested case hearing. The District Court held Auditor Miller to a higher standard than is required by HAVA, or the Iowa Administrative Procedures Act in demonstrating injury in fact. Auditor Miller was adversely affected by the Commission’s failure to comply with HAVA’s requirement that a hearing be held at the complainant’s request. In support of its decision to deny Auditor Miller standing to file a petition for judicial review of the Commission’s process denial, the District Court held, looking at the matter from the past-tense, that Auditor Miller’s Complaint had “contained no allegations that the voter registration rolls in Linn County, or any other

county for that matter, were hacked into, tampered with, or otherwise compromised.” The District Court essentially imposed a requirement that Auditor Miller articulate or *prove* a violation of HAVA in order to demonstrate an injury from the same. That is not the test under any law. And the District Court omitted consideration of IAC 721—25.4’s recognition that Complaints can be filed by “any person who believes...that any [violation] of Title III...has occurred, is occurring or is about to occur.” Auditor Miller is such a person. He holds such a belief. He has alleged that Secretary Pate’s violations of Title III has occurred, is occurring or is about the occur.

The Commission’s failure to convene a contested case hearing to evaluate those allegations has caused Auditor Miller to be adversely affected, as anticipated by the Administrative Procedures Act, and suffer injury in fact from the Commission’s actions. The District Court’s failure to recognize that injury and, therefore, to deny standing to petition the court for judicial review of the Commission’s denial of a contested case proceeding, constitutes error. Auditor Miller has standing in the same way that Des Moines had standing in *City of Des Moines* because it would be “involved in future negotiations affected by the decision of [PERB] in this matter establishes that its interest has been specially and injuriously affected.”

*Bonilla v. Iowa Bd. of Parole*, 930 N.W.2d 751, 763 (Iowa 2019) (citing *City*

*of Des Moines*, 275 N.W.2d at 759). The *Bonilla* Court went on to describe that the Iowa Supreme Court in the *City of Des Moines* case immediately went on to consider the prejudice aspect of Iowa Code section 17A.19(10), and held that the “city’s future recurring involvement in contract negotiations also serves to meet this requirement.” *Id.* The Auditor’s future involvement in elections, as well as his ability to challenge those in the past, present, or future based on the statute, suffices to demonstrate both standing and prejudice necessary for judicial review.<sup>8</sup>

The District Court essentially imposed a requirement that a specific injury be proven by Auditor Miller before he had an opportunity for the minimum hearing required below. It is a double standing requirement that exists nowhere in the law. The injury is caused by the Commission’s failure to provide, upon request, the required process below, and is compounded by the District Court’s finding, newly imposed, that one cannot have an injury in fact without having proven one’s case below, where there was no opportunity to have done so.

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<sup>8</sup> While these concepts may seem overlapping, the *Bonilla* Court clarified that Iowa Code section 17A.19(10) is a harmless error rule, as opposed to an express requirement of standing. *Id.* at 762-63.

**III. The District Court Erred in Failing to Follow the Law of the Case, Having, First, Found Subject Matter Jurisdiction in its Mootness Determination But Then, Second, Having Ruled That Auditor Miller Lacked Standing to File a Petition for Judicial Review to Challenge the Commission’s Failure to Convene a Required a Contested Case Hearing to Consider Auditor Miller’s HAVA Complaint.**

**A. Preservation of Error**

Auditor Miller preserved error on this issue in briefing below. *See* Petitioner’s Resistance to Respondent’s Motion to Dismiss as Moot, p. 3, Docket No. 21.

**B. Standard of Review**

*See* Standard of Review in Section I.B., above.

**C. The Law of the Case was that the Court had Jurisdiction to Decide These Issues**

The District Court erred in determining, more than three years after Auditor Miller’s Petition for Judicial Review had been filed, that he lacked standing to assert the claim for judicial review of the Commission’s decision, and affirming the Motion to Dismiss, without benefit of a contested case hearing. (App. 206-207). In addition to the injury in fact, described above, the District Court had previously denied Defendant’s Motion to Dismiss on mootness in April of 2021. (App. 234-239). Therefore, the law of the case had already determined impliedly that the Court had jurisdiction

to determine a matter of mootness, and therefore, there was no issue with standing. *See Woods v. Schmitt*, 439 N.W.2d 855, 865-66 (Iowa 1989) (reviewing law of the case doctrine as the “practice of courts to refuse to reconsider what has once been decided.”) (citation omitted); *see also Beam v. Iowa Emp't Sec. Com.*, 264 N.W.2d 742, 744-45 (Iowa 1978) (holding that district court’s determination on review of the Commission’s decision became the law of the case and therefore issues were rendered moot). While subject matter and standing are not the same, they are related issues. *Citizens for Responsible Choices v. City of Shenandoah*, 686 N.W.2d 470, 473 n.1 (Iowa 2004) (holding that while “ripeness or standing are technically not matters of subject matter jurisdiction, they are closely related doctrines.”).

In the midst of the remarkably long proceedings, below, starting with Auditor Miller’s July 16, 2019, filing of his Complaint until, nearly four years later, the District Court’s March 27, 2023, issuance of its final ruling dismissing Auditor Miller’s Petition for Judicial Review based on standing, two full federal election cycles had passed: the fundamental democratic processes that HAVA had been designed to protect. In attempt to take advantage of the inexplicably long passage of time after the first federal election cycle had passed, the Voter Registration Commission, on February 11, 2021, filed a Motion to Dismiss as Moot the judicial review action. In it,

the Commission averred that the 2020 federal election cycle, having come and passed, had deprived Auditor Miller of the relief he had requested, in part: remedies related to security of voter registration lists related to the November 2020 federal elections. (Respondent’s Motion to Dismiss as Moot, p. 2, Docket No. 19).

Auditor Miller resisted the motion arguing that the complained-of conditions related to the I-Voters program were likely to reoccur after the 2020 federal election cycle and, therefore, the issue was exempt from the mootness doctrine. In addition, citing 52 U.S.C. § 21112(a)(2)(B) and Iowa Admin. Code r. 721—25.1(1), Auditor Miller averred, the Commission’s motion to dismiss ignored and made a mockery of the plain language of HAVA, which allows any person who believes a violation of HAVA “*has occurred, is occurring or is about to occur* in connection with a federal election” to file a Complaint. (Petitioner’s Resistance to Respondent’s Motion to Dismiss as Moot, p. 3, Docket No. 19). The District Court was briefed and heard oral arguments on this motion. Having reviewed applicable federal and state statutory law related to HAVA, the Court denied the motion, and concluded its Ruling as follows: “HAVA and the Iowa administrative procedures provide [Auditor] Miller with the right to pursue injunctive relief with respect to the past election. If the Court granted



Miller's petition and remanded to [the Commission] for a contested case hearing on the merits, [the Commission] would retain the ability to grant injunctive relief related to the 2020 election for violations of HAVA. Therefore, Miller's petition is not moot." (App. 238). Correspondingly, if the Commission had the ability to grant injunctive relief, which could be ordered by the District Court, Auditor Miller had to have standing to assert, and obtain, such a remedy. In other words, Auditor Miller's complaint could be redressed by a District Court order in his favor, which demonstrates standing. *See Iowa Citizens for Cmty. Improvement & Food & Water Watch*, 962 N.W.2d at 791 ("Think about it this way: If the court can't fix your problem, if the judicial action you seek won't redress it, then you are only asking for an advisory opinion."). This is the same redressability standard applied for federal common law standing analysis. *Id.* (citing *Alons v. Iowa Dist. Court for Woodbury County*, 698 N.W.2d 858, 869 (Iowa 2005)).

The plain language of the Ruling expressly recognized Auditor Miller's right to pursue injunctive relief with respect to the past election. Even though the District Court did not, then, proceed to adjudicate the merits of Auditor Miller's allegation that the Commission had violated his rights under HAVA when it had dismissed his Complaint without, first, having convened the federally- and state-mandated contested case hearing

requested, it still determined that he had standing to be in the District Court. By implication at the very least, if the complaint was not moot, and the District Court recognized the future ability to obtain injunctive relief, Auditor Miller was found to have standing to pursue such claims. In order to be present in the case, and for the District Court to have jurisdiction to determine even the issue of mootness, Auditor Miller had to have had standing. Therefore, the District Court was thereafter barred by the law of the case from making the opposite determination almost two years later. There were no different facts presented three years later, and the law of the case was that the District Court had jurisdiction to issue rulings, and correspondingly, Auditor Miller had to have standing to assert the same. *Cf. United Fire & Cas. Co. v. Iowa Dist. Court*, 612 N.W.2d 101, 103-04 (Iowa 2000) (describing limited exceptions to law of the case, including when different facts are presented on an issue).

Moreover, Defendant had waived the argument of standing in filing a Motion to Dismiss based on mootness, and not with respect to standing, although the guidance has not been clear on this matter. *See Richards v. Iowa Dep't of Revenue*, 414 N.W.2d 344, 349 (Iowa 1987) (“The cases, however, indicate that standing is not among these [subject matter jurisdiction] issues and must be raised from the outset in order to preserve

error.”); *but see Schott v. Schott*, 744 N.W.2d 85, 88 (Iowa 2008) (holding that standing is jurisdictional and it can therefore be raised at any time). Defendant also did not plead lack of standing as an affirmative defense. (Defendant’s Answer, filed 3/6/2020). While Defendant referenced standing as part of the hearing in 2020, it did not renew this argument in any subsequent filing or hearing in the intervening years. Therefore, Defendant had waived this argument. *See State Comprehensive Petroleum Underground Storage Tank Fund Bd. v. Federated Mut. Ins. Co.*, 596 N.W.2d 546, 552 (Iowa 1999) (“Waiver is defined as ‘the voluntary or intentional relinquishment of a known right.’”) (internal quotations and citations omitted).

### **CONCLUSION**

The District Court erred when it found that Auditor Miller did not have standing to pursue his claims. Federal and state statutory law implementing HAVA demonstrate that Auditor Miller had and has standing, and the Administrative Procedures Act merely affirms the same. The District Court failed to force the Commission to follow federal law and state administrative rules that required it to hold a contested hearing on the merits of Auditor Miller’s Complaint. Further, the District Court erred when it failed to determine that the Commission had erred when it had considered

unproven factual assertions made by the Secretary of State and had applied an incorrect legal standard in granting the Motion to Dismiss—without benefit of the evidentiary contested case hearing that Auditor Miller had requested.

The Commission’s decision to dismiss Auditor Miller’s Complaint should have been reversed by the District Court and the matter remanded for a contested case hearing before the Commission, as required by law. Instead, without addressing the issue of Auditor Miller’s entitlement to an evidentiary hearing before the Commission to consider the merits of his allegation that Secretary Pate had violated HAVA, the District Court erred when it ruled that Auditor Miller lacked standing to file a petition for judicial review and dismissed it.

In fact, under the express statutory provisions passed by Congress that established HAVA, and pursuant to administrative rules created by the Iowa Secretary of State to implement HAVA in a manner consistent with the federal statute, Auditor Miller had standing to file a Petition for Judicial Review to request the District Court to remand the matter back to the Commission with instructions to convene a contested case proceeding to determine the merits of Auditor’s allegations that Secretary Pate had violated HAVA.

**WHEREFORE**, Petitioner-Appellant Linn County Auditor Joel Miller prays that the Iowa Supreme Court find as a matter of law: that the Iowa District Court erred in finding that Auditor Miller lacked standing to file a Petition for Judicial Review Voter Registration Commission; that, the Commission violated federal statutory law and state administrative rules when it granted Iowa Secretary of State Paul Pate's Motion to Dismiss; and, that the case should be remanded to the Voter Registration Commission with instruction that a contested case proceeding must be convened to consider the merits of Auditor Miller's Complaint. Auditor Miller further requests that the Iowa Supreme Court allow any and other appropriate relief as may be deemed proper in this case.

**REQUEST FOR ORAL ARGUMENT**

Petitioner-Appellant requests that this case be heard in oral argument.

Respectfully submitted,

LAREW LAW OFFICE

/s/James C. Larew

James C. Larew AT0004543

504 East Bloomington Street

Iowa City, IA 52245

Telephone: 319-337-7079

Facsimile: 319-337-7082

Email: james.larew@larewlawoffice.com

**ATTORNEY FOR PETITIONER-  
APPELLANT**

**CERTIFICATE OF COST**

Petitioner-Appellant certifies that there was no cost for the reproduction of this brief, as this brief has been electronically filed.

/s/Andrew Kramer  
Andrew Kramer

**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 Times New Roman in 14-point typeface and contains 11,178 words, excluding the parts of the brief exempted by Iowa R. App. 6.903(1)(g)(1).

/s/Andrew Kramer  
Andrew Kramer

**CERTIFICATE OF SERVICE**

The undersigned certifies a copy of Petitioner-Appellant’s Final Brief was served on March 8, 2024, upon the clerk of the supreme court and upon the following persons by CM/ECF:

DAVID M. RANSCHT  
Assistant Attorney General  
Iowa Department of Justice  
Licensing & Administrative Law Division  
Hoover Building, 2nd Floor  
1305 E. Walnut St.  
Des Moines, IA 50319  
Ph: (515) 281-7175  
E-mail: david.ranscht@ag.iowa.gov  
**ATTORNEY FOR DEFENDANT-APPELLEE**

          /s/ Andrew Kramer            
Andrew Kramer