

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

<p>LINN COUNTY AUDITOR JOEL MILLER,</p> <p>Petitioner,</p> <p>v.</p> <p>IOWA VOTER REGISTRATION COMMISSION,</p> <p>Respondent.</p>	<p>CASE NO. _____</p> <p>PETITION FOR JUDICIAL REVIEW</p>
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COMES NOW, Petitioner Linn County Auditor Joel Miller, pursuant to Iowa Code chapter 17A and Iowa Administrative Code rule 721—25.35, and petitions to the Court to review the decision of the Respondent, the Iowa Voter Registration Commission, in the above-captioned matter, and states:

1. Pursuant to Iowa Administrative Code 721—chapter 25, Petitioner filed a Complaint, dated July 17, 2019, with the Office of the Secretary of State, alleging violations by the Secretary of State of Title III of the federal Help America Vote Act (“HAVA”), codified at 52 USC §§ 21081-21102. The Complaint (and all enclosures referenced therein) is attached hereto and incorporated as Exhibit A.
2. The administrative complaint procedure set forth in IAC 721—chapter 25 was established to comply with HAVA and is available to any person who believes a violation of any provision of Title III of HAVA “has occurred, is occurring, or is about to occur in connection with a federal election.” Iowa Admin. Code r. 721—25.1(1).
3. Auditor Miller’s Complaint alleged that the I-Voters voter registration database maintained by the Iowa Secretary of State does not comply with HAVA’s security

requirements, including the provision of “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 USC § 21083(a)(3), (a)(4)(B).

4. 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 (“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).
5. On November 7, 2019, the Commission issued an “Amended Notice of Hearing and Statement of Charges,” attached hereto and incorporated herein as Exhibit C, setting a contested case hearing for December 9, 2019 before the Commission.¹ The Notice further ordered Secretary of State Pate to file an Answer to the allegations contained in the Complaint. *See* Iowa Admin. Code r. 721—25.6 (requiring each Respondent to file an Answer within ten days of service of notice of the proceedings).
6. On November 8, 2019, Iowa Secretary of State Paul Pate, in lieu of filing an Answer, filed a Motion to Dismiss the Complaint, arguing that Auditor Miller failed to allege a violation of Title III regarding a federal election, and failed to state a claim upon which relief could be granted. Auditor Miller filed a Resistance to the Motion.
7. The Commission heard arguments from the parties related to the Motion to Dismiss on December 30, 2019. The Commission took the matter under advisement and permitted

¹ A “Notice of Hearing and Statement of Charges” was issued on November 6, 2019, and is attached hereto and incorporated herein as Exhibit B. It stated, “The Complainant is responsible for proving by a preponderance of the evidence that a violation occurred.” Exhibit B, p. 2. 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.” Exhibit C.

the parties to file closing briefs. On January 17, 2020, the Commission reconvened to deliberate on the Motion to Dismiss, and ultimately ruled in favor of the motion on a 2-1 vote, thereby dismissing Auditor Miller's Complaint. A written decision was issued by the Commission on February 10, 2020. It is from this decision that Auditor Miller appeals.

8. HAVA requires a state accepting federal funds under HAVA to establish an administrative complaint procedure that meets certain specified criteria. 52 U.S.C. § 21112. Among the requirements: "At the request of the complainant, there *shall* be a hearing on the record." 52 U.S.C. § 21112(a)(2)(E) (formerly codified at 42 USC § 15512((a)(2)(E))(emphasis added).
9. The applicable state administrative rules similarly require the Commission, upon request or by its own determination, to convene a hearing to consider the merits of a complaint. *See Iowa Admin. Code* rs. 721—25.4 (notice of proceedings shall include a schedule under which "a hearing on the complaint will be conducted, if requested" and a "deadline by which either party may request an evidentiary hearing"); 25.8(1) (complaints shall be evaluated based upon written submissions "unless the complainant or respondent requests a hearing on the record or the presiding officer determines that an evidentiary hearing will assist in resolution of outstanding factual disputes"); 25.8(2) (the presiding officer "will not issue a decision upon written submissions prior to the expiration of the time within which" the parties may request a hearing on the record, unless both parties file a written waiver of the right to hearing); 25.10(1) (a request for hearing shall be included within the complaint or made via written request within ten days following service of the Answer by Respondent).

10. The Commission, pursuant to IAC rule 721—25.8(1), determined that the matter should be set for a contested case hearing when it issued its initial Notice. *See Exhibits B, C.* Auditor Miller, in order to assure there was no factual ambiguity as to his desire for a hearing, submitted a formal request for hearing simultaneously with his final brief, filed prior to service of an Answer by Secretary of State Paul Pate, the named Respondent in the Complaint, in compliance with IAC rule 721—25.10(1).
11. The decision to grant a motion to dismiss is proper only when the petition, on its face, “shows no right of recovery under any state of facts.” *Rieff v. Evans*, 630 N.W.2d 278, 284 (Iowa 2001)(citation omitted). “A motion to dismiss should not be liberally granted.” *Id.*
12. Under Iowa’s rules of notice pleading, very little is required in a petition to survive a motion to dismiss. *Rieff*, 630 N.W.2d at 292. In fact, “[n]early every case will survive a motion to dismiss under notice pleading.” *U.S. Bank v. Barbour*, 770 N.W.2d 350, 353 (Iowa 2009). In considering a motion to dismiss, the petition must be construed in the light most favorable to the complainant. *Smith v. Smith*, 513 N.W.2d 728, 730 (Iowa 1994). All doubts are resolved in complainant’s favor, and “the allegations of the petition are accepted as true.” *Id.* An appellate court reviews a ruling on a motion to dismiss for correction of errors at law. *U.S. Bank*, 770 N.W.2d at 353.
13. Auditor Miller has exhausted all administrative remedies and has been aggrieved and adversely affected by final agency action. *See* Iowa Admin. Code r. 721—25.28(1)(when the voter registration commission “presides over the reception of evidence at the hearing, the decision is a final decision”); 721—25.30(1)(“All complaint proceeding decisions

must be issued by the state commissioner of elections or voter registration commission, as appropriate”).

14. Venue in Polk County is appropriate pursuant to the provisions of Iowa Code § 17A.19(2).

15. The substantial rights of Auditor Miller have been prejudiced, and relief on judicial review is appropriate, because the agency action is:

- a. In violation of federal law;
- b. In violation of agency rule;
- c. Affected by other error of law; and/or
- d. Unreasonable, arbitrary, capricious or characterized by an abuse of discretion or a clearly unwarranted exercise of discretion. Iowa Code § 17A.19(10).

16. Federal and state law, as outlined above, *require* that a hearing be held on Auditor Miller’s Complaint. The Commission’s summary dismissal of the Complaint violated both federal law and agency rules.

17. In addition, the Petitioner’s Complaint met the requirements of rule 721—25.1(1).

Auditor Miller was not required to prove the allegations of the Complaint upon its filing, or in the context of a Motion to Dismiss. Petitioner’s good faith belief that a violation “has occurred, is occurring, or is about to occur” was sufficient to survive a Motion to Dismiss. The Commission erred as a matter of law and acted in an unreasonable, arbitrary manner when it foreclosed, via summary dismissal, Auditor Miller from presenting facts, via documents and direct testimony or cross-examination of witnesses, at a contested case hearing to support the allegations of the Complaint.

WHEREFORE, Petitioner Linn County Auditor Joel Miller prays that the District Court: find as a matter of law that the Voter Registration Commission violated federal law and state administrative rules and abused its discretion when it granted the Motion to Dismiss; order the case be remanded for a contested case hearing before the Voter Registration Commission, as required by federal law and state administrative rules; and order any other appropriate relief as may be deemed proper in this case.

Respectfully submitted,

LAREW LAW OFFICE

/s/James C. Larew

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ATTORNEY FOR PETITIONER

Attached:

Exhibit A: Complaint, dated July 17, 2019

Exhibit B: Notice of Hearing and Statement of Charges, dated November 6, 2019

Exhibit C: Amended Notice of Hearing and Statement of Charges, dated November 7, 2019

Copy to:

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ATTORNEY FOR RESPONDENT

PROOF OF SERVICE

The undersigned certifies that the foregoing document was served upon all parties to each of the attorneys of record herein at their respective addresses disclosed on the pleadings on February 13, 2020.

By:

- Hand Delivered
- US Mail
- Fax
- Email
- Other – CM/ECF

Signature /s/Andrew Kramer