

IN THE SUPREME COURT OF IOWA

No. 19-1397

COMMISSIONER NICOLE BRIBRIESCO-LEDGER,

Plaintiff-Appellee,

v.

FRANK J. KLIPSCH, MAYOR AND THE CITY OF DAVENPORT,

Defendants-Appellants.

**Plaintiff – Appellee’s Final Brief and
Request for Oral Argument**

INTERLOCUTORY APPEAL FROM IOWA DISTRICT COURT FOR
SCOTT COUNTY
THE HONORABLE THOMAS REIDEL
SCOTT COUNTY CASE NO. EQCE131600

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C. Does Defendant Mayor's April 15, 2019 Removal Letter Belie Defendants' Claim That Removal of a Civil Rights Commissioner Can be Done Anytime And Without Cause ?

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D. Is the Davenport Civil Rights Commission a Separate, Distinct, and Independent Legal Entity From the City of Davenport ?

Cases

Botsko v. Davenport Civil Rights Comm'n, 774 N.W.2d 841, 846 (Iowa 2009)

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Routing Statement

On October 11, 2019 the Iowa Supreme Court granted Defendants' Application for Interlocutory Appeal. The Supreme Court has thus retained jurisdiction.

Statement of the Case

This interlocutory appeal presents an issue of first impression. Can a municipal civil rights commissioner be discharged by the Mayor for no reason ? The case pertains to the interpretation of Iowa Code chapter 216, "Civil Rights Commission", Iowa Code § 372.15 "Removal of appointees" and Davenport City Code Chapter 2.58, "Civil Rights Commission."

Can the Mayor of a city, with a population of 29,000 or larger, summarily discharge a duly appointed municipal civil rights commissioner without any showing of cause ?

Is the standard for removal of a municipal civil rights commissioner governed by § 372.15 or by § 216.19(2) of the Iowa Code?

The Davenport Civil Rights Commission (DCRC) is a mandated commission first created by the legislature in 1965. DCRC investigates complaints

brought by citizens against individuals and entities in the housing, employment, age, gender, and credit arenas.

Commissioners make adjudicative rulings in contested cases that are subject to Court appeals. § 2.58.050 of the Davenport City Code.

Statement of Facts

Plaintiff Nicole Bribriesco-Ledger (Ledger) was a duly appointed Commissioner who was a lawful member of The DCRC pursuant to chapter 216, “Civil Rights Commission” of the Iowa Code and, chapter 2.58, “Civil Rights Commission” of the Davenport City Code. Members of the Commission exercise quasi-judicial authority and are independent of the Mayor and the City of Davenport pursuant to both of these chapters.

On April 15, 2019, Defendant Mayor signed and sent Ledger and three other commissioners a letter asserting that he was immediately removing them as civil rights commissioners pursuant to Iowa Code § 372.15 and alleged twelve reasons as cause for their removal. *April 15, 2019 Mayor Removal Letter to Four DCRC Commissioners, App.035-038*. The Mayor also alleged that the removal letter was signed by Alderman Mike Matson “in support” of his removal action. Matson’s signature and his name appear on p. 4 of the removal letter. Matson has denied, under oath, signing or consenting to allowing his signature to appear on the April

15, 2019 removal letter. *August 1, 2019 Deposition of Alderman Michael Matson Tr. 36:15-22 ,_App 098.*

On April 30, 2019 Ledger filed a lawsuit against Defendants for her unlawful removal from the Commission by filing a petition for writ of certiorari and a declaratory judgment action. App. 014-021.

Ledger also requested a name clearing hearing. On June 4, 2019 Defendant City published notice of the § 372.15 public name clearing hearing. App. 047. Publication of any notice of public hearing requires a municipality to publish notice of hearing not less than four (4) days before the hearing date. Iowa Code § 362.3(1)(a).

On June 7, 2019, Defendants filed a Return to the Writ of Certiorari. App. 033-049.

On June 7, 2019, an alleged §372.15 public name clearing hearing was held at City Hall before the Defendant Mayor and the Davenport City Council on Ledger's removal from the DCRC. Defendant Mayor abruptly closed and terminated the public hearing --fifty-three minutes into the hearing-- while there were at least two members of the public waiting to speak to the Mayor and Council on Ledger's removal. Defendant Mayor would not allow DCRC Director Latrice Lacey and DCRC Commissioner Susan Greenwalt to speak at the June 7, 2019

public hearing regarding their opposition to Ledger's removal, even though they were adjacent to the city council podium to speak. *June 26, 2019 Affidavit of Latrice Lacey, App. 070-071. and June 26, 2019 Affidavit of Susan Greenwalt, App. 068-069.*

On June 10, 2019, Defendants filed a Motion for Summary Judgment, Memorandum of Law in support of summary judgment, Statement of Undisputed Facts, and Motion for Protective Order. App. 050-053.

On June 13, 2019, Ledger served Requests for Admissions on Defendants. App. 054.

On June 25, 2019 Ledger filed a Resistance to Defendants' Motion For Summary Judgment, Brief in support of her Resistance to summary judgment, Response and Resistance to Defendants' Statement of Undisputed Facts, Ledger's Statement of Disputed Facts, and Ledger's Resistance to Defendants' Motion for Protective Order. App. 058-067

On June 27, 2019, Ledger filed a motion to submit the audio and videotape of the June 7, 2019 public hearing audio and videotape to the district court. App. 072-073.

On July 11, 2019, oral argument was held on Defendants' Motion for Summary Judgment, Ledger's Resistance to Defendants' Motion for Summary

Judgment, Defendants Motion for Protective Order, and Ledger's Motion to Submit June 7, 2019 Public Hearing Video to the district court.

On July 12, 2019, Defendants served their Responses to Ledger's Request for Admissions. Defendants denied all of Ledger's Requests, including the Request for Admission No. 2 which stated, "Alderman Michael Matson did not sign the April 30, 2019 Removal Letter," and No. 3 which stated, "Alderman Michael Matson did not read the April 15, 2019 Removal Letter before its issuance on April 15, 2019." *Defendant's Response to Ledger Request For Admissions, Response to Requests No. 2 and No. 3, App. 062-064.*

On July 23, 2019, the district court denied Defendants' Motion for Summary Judgment, ruling that there was a for cause standard for the dismissal of a municipal civil rights commissioner, and the existence of cause constituted a genuine issue of material fact, in finding summary judgment was not appropriate. *July 23, 2019 District Court Ruling, p.6, App. 081.* The district court found Ledger's motion to submit the June 7, 2019 video was moot. *July 23, 2019 District Court Ruling, p. 7 App. 076-083.*

On August 1, 2019, Ledger took the deposition of Alderman Michael Matson. Matson testified in his sworn deposition that he did not sign his name on the April 15, 2019 removal letter, and that parts of the April 15, 2019 removal

letter were mean, divisive, and unprofessional. *Michael Matson August 1, 2019 deposition, tr:36:15-22, App. 098.*

On August 22, 2019, Defendants filed an Application for Interlocutory Appeal to the Iowa Supreme Court. App. 088.

On August 26, 2019, Ledger filed a Resistance to Defendants' Motion for Protective Order, and a Motion to Compel Discovery and filed the August 1, 2019 deposition transcript of Alderman Michael Matson in support of these documents. On August 27, 2019, Ledger filed Matson deposition Ex. B and Ex. C, and a Supplement to Ledger's Second Motion for Stay of Proceedings. App. 084-087; 111-114.

On September 16, 2019, the district court ordered a stay of proceedings until the Iowa Supreme Court had processed the application for appeal, taking no further action Defendants' Motion for a Protective Order and Ledger's Resistance to that motion.

On September 26, 2019, Ledger filed a motion to reconsider the September 16, 2019 order staying district court proceedings. On September 26, 2019 the District Court denied Ledger's motion to reconsider. App. 115-116.

Argument

A. The District Court Correctly Denied Defendants’ Motion for Summary Judgment and Correctly Interpreted the Meaning of the Word “Independent” in § 216.19(2) of the Iowa Code.

Plaintiff – Appellee agrees that the standard of review for summary judgment is for corrections of errors at law and that alleged error by the district court was preserved by Defendants.

The district court held oral argument on Defendants’ Motion for Summary Judgment, and after hearing arguments of the parties, correctly denied Defendants’ summary judgment motion. *July 23, 2019 District Court Ruling, p.61; App. 076-083.*

The DCRC is a separate and independent legal entity from the City of Davenport mandated by the Iowa Legislature. Iowa Code § 216.19(2) states:

A city with a population of twenty-nine thousand, or greater, shall maintain an ***independent*** local civil rights agency or commission consistent with commission rules adopted pursuant to chapter 17A. An agency or commission for which a staff is provided ***shall have control over such staff***. A city required to maintain a local civil rights agency or commission shall structure and adequately fund the agency or commission in order to affect cooperative undertakings with the Iowa civil rights commission and to aid in effectuating the purposes of this chapter (bolding and underlining added).

The district court correctly found that the statutory language of Iowa Code § 216.19(2) requires that the City of Davenport maintain an **independent** local civil rights agency or commission. The district court found that the word “independent” stated in § 216.19(2) means “not subject to the control or influence of another.” The district court cited the Black’s Law definition of the word “Independent” in reaching its decision. *independent, Black’s Law Dictionary (11th ed. 2019)*, (defining “independent agency” as “[a] federal agency, commission, or board that is not under the direction of the executive, such as the Federal Trade Commission or the National Labor Relations Board”). *July 23, 2019 District Court ruling, p.4; App. 079.*

Defendants’ slipshod remarks about what the words “independent” means should be given little countenance by this Court. Defendants seek to confuse the issue by claiming that the words “Independent local civil rights agency or commission” refers to the DCRC being independent from the Iowa Civil Rights Commission (ICRC). Defendants – Appellants Brief, p.25. While it is true and correct that DCRC is separate and independent from the ICRC, that does not end the legal analysis or the legal interpretation of the words “Independent local civil rights agency or commission”. The DCRC is also a separate and independent entity from the City of Davenport.

DCRC jurisdiction extends to issues of Davenport employment discrimination, housing discrimination, gender discrimination, and age discrimination claims within the corporate boundaries of the City of Davenport. DCRC exercises quasi-judicial authority and renders decisions in contested cases. Davenport City Code §2.58.070(A)(2),(4). Because DCRC adjudicates cases in a quasi-judicial capacity akin to an administrative law judge, commission members cannot be summarily dismissed without cause by the Mayor. Once their appointment is made, commissioners are independent of the Mayor and do not serve at the Mayor's pleasure. Iowa Code § 216.19(2).

The district court correctly found the specific language used by the Legislature to create an “independent local civil rights agency or commission”, as used in § 216.19(2), creates a standard of dismissal for cause. *July 23, 2019 District Court Ruling, p.6. App. 081.* The district court found that this standard embodied in § 216.19(2) preempts the more general provision of Iowa Code § 372.15, at least to the extent that § 372.15 allows dismissal without cause. *July 23, 2019 District Court ruling p.6. App. 081.* While § 372.15 may allow for a dismissal of a person appointed to a city office without cause, the Legislature adopted the statutory words of § 216.19(2) to create a standard of dismissal for cause for a civil rights commissioner.

There is a conflict between § 216.19(2) and § 372.15 that is irreconcilable. A specific state statute controls over a general state statute provision when there is a conflict. *Iowa Code § 4.7.* § 216.19(2) is more specific than § 372.15. If statutes enacted at different sessions of the legislature are irreconcilable, the statute latest in date of enactment by the general assembly prevails. *Iowa Code § 4.8.* § 216.19(2) was amended last by the Legislature in 1990, thus it prevails over § 372.15. (See 73 G.A., Ch. 1166 §1 (1990)).

B. The District Found That A Genuine Issue of Material Fact Precludes Summary Judgment.

In ruling upon a motion for summary judgment, a genuine issue of material fact exists if reasonable minds may differ on the resolution of an issue. *McIlravy v N. River Ins. Co.*, 653 N.W. 2d 323,328 (Iowa 2002). A “material” fact is one that can affect the final outcome of an issue. *Du Trac Cmty. Credit Union v. Radiology Grp. Real Estate, L.C.*, 891 N.W. 2d 210, 215 (Iowa 2017). A material fact issue precludes a moving party’s motion for summary judgment. The district court considers every legitimate inference that can be reasonable deduced from the record on behalf of the nonmoving summary judgment party. *Phillips v Covenant Clinic*, 625 N.W. 2d 714, 717-18 (Iowa 2001).

The district court ruled that the existence of cause in the present case constituted a genuine issue of material fact and that summary judgment was not

appropriate. Defendants' early filing of their summary judgment motion --32 days after service of Ledger's suit, and before any discovery was able to be conducted by Ledger-- was thus premature and ill-advised.

Summary Judgment was correctly denied by the district court because there was a clear factual issue to determine at trial. Do the twelve reasons stated in the April 15, 2019 removal letter constitute just cause for Ledger's removal from her quasi-judicial position on the Commission ?

C. Defendant Mayor's April 15, 2019 Removal Letter Belies Defendants' Claim That Removal of a Civil Rights Commissioner Can Be Done Anytime and Without Cause.

Defendants strenuously argue that there is no necessity for any for cause standard to remove a civil rights commissioner and solely rely upon § 372.15 of the Iowa Code for their position. *Defendants' Brief*, p. 13-14. §372.15 states that the Mayor's "order shall *give the reasons*" for removal, which clearly contradicts the Mayor's claim that no cause is necessary to remove Ledger. Defendants argue that there is a no cause standard and deny that there is any necessity for any cause, essentially arguing the Mayor can do whatever and whenever he likes in removing a DCRC Commissioner.

Defendants' position is also undermined by the contents of the Mayor's removal letter. Examination of Defendant Mayor's removal letter belies Defendants' no cause argument. The April 15, 2019 removal letter states:

“Effective immediately, pursuant to Iowa Code 372.15 and the authority granted to me as Mayor under Davenport Municipal Code Chapters 2.06 and 2.58, I am hereby officially removing you as a commissioner from the Davenport Civil Rights Commission.”

“Some of the reasons I am taking this action are set forth hereinafter (applicability to individual commissioners may vary).”

The April 15, 2019 removal letter alleges twelve separate reasons stated in numbered paragraphs that are listed over the next two and one-half pages of the letter. *April 15, 2019 Removal Letter, Petition, Ex.A.* App. 022-025. The April 15, 2019 removal letter then states:

“For these, and additional reasons related to open records and open meetings violations, you, individually and collectively are hereby removed as a commissioner of the Davenport Civil Rights Commission.”

The April 15, 2019 removal letter clearly shows that the Mayor believed a for cause standard applied for removal of these four civil rights commissioners and that he was removing them because he claimed that there was an alleged cause to do so. The removal letter creates a fact issue as to whether just cause existed for Ledger's removal. Obviously, if the Mayor believed the commissioners could be

removed without any cause, as he now argues in his Brief, p.13-14, he would not have detailed twelve reasons for their removal in his Removal Letter.

Defendants heavily rely upon the words “all persons” in § 372.15 and claim that there is “no exception” in this section that pertains to when a DCRC commissioner is removed nor is there a requirement of cause. *Defendants Brief*, p. 13-14. Defendants ignore the words, “except as otherwise provided by state or city law” immediately before the phrase “all persons” in their reading of § 372.15. Iowa Code § 216.19(2) overrides § 372.15. The district court found that § 216.19(2) provided a for cause standard to Commissioner Ledger which created an issue of material fact. *July 23, 2019 Ruling, p.4-6. App. 079-081.*

The district court correctly applied § 216.19(2) to find that there was an implied for cause standard for the removal of Civil Rights Commissioner Ledger, who is an independent and impartial adjudicator and who exercises a quasi-judicial role in the exercise of her powers. A civil rights commissioner exercises authority that is similar to an administrative law judge. Ledger’s quasi-judicial role is confirmed by chapter 2.58 of the Davenport City Code, which lists in great detail the adjudicative authority of the commission. See Davenport City Code § 2.58.100 - § 2.58.380, App. 120-130.

The district court found that there was nothing about the ICRA which indicated that the Legislature intended to deviate from the widely accepted understanding of agency independence. A different section of the ICRA provides that a state ICRC member may only be removed for cause. Iowa Code § 216.3. The district court found that this strongly suggested that the Legislature intended for municipal commissioners also to be insulated from outside influence by a for cause dismissal standard. *July 23, 2019 District Court ruling, p.6, App. 081.*

The district court examined and cited both federal caselaw and United States Supreme Court caselaw in reaching its for cause decision. The district court found that “[i]t has long been understood that dismissal for cause is a fundamental feature of agency independence.” *July 23, 2019 District Court Ruling, p.5, App. 080. See Humphrey’s Ex’r v. United States, 295 U.S. 602, 629, 55 S. Ct. 869, 874, 79 L. Ed. 1611 (1935).* (“[I]t is quite evident that one who holds his office at the pleasure of another cannot be depended upon to maintain an attitude of independence against the latter’s will”). *Collins v. Mnuchin, 896 F.3d. 640,649 n. 47 (5th Cir. 2018).* (“Agencies may be classified as either independent or executive. Where the agency head is removed at will, the agency is ‘executive’. But where the head or heads of the agency are removable only for cause, the agency is an ‘independent’ agency that operates free of presidential direction or control.”). *Ford v. Blagojevich, 260 F. Supp. 2d 700, 707 (C.D. Ill. 2003).* (“[S]ince political independence also is

required of the Illinois Industrial Commissioner, this Court likewise holds that the lawfully appointed members of the Commission can only be removed for cause, and a Governor’s decision removing members is subject to judicial review.”).

The district court examined state and federal case law in reaching its decision. The district court examined and cited a United States Supreme Court holding, a Fifth Circuit case and an Illinois federal court case holding, all as rationale in reaching its July 23, 2019 ruling. The district court also cited a 2012 Iowa Supreme Court ruling that emphasized the importance of the word “independent” in a statute. *See Office of Citizen’s Aide/ Ombudsman v. Edwards*, 825 N.W. 2d 8, 16-17 (Iowa 2012). *Edwards* interpreted the word “independent”, as stated in Iowa Code § 903 A.1, holding that Department of Corrections administrative law judges are independent adjudicators not subject to the supervision of the warden. *Id.* at 17.

The district court quoted the following 2013 law review article in support of its decision:

Commentators broadly agree that for-cause tenure protection is the sine qua non of agency independence. A leading overview states that independence is a legal term of art in public law, referring to agencies headed by officials that the President may not remove without cause. Such agencies are, by definition, independent agencies; all other agencies are not. While some commentators also point to structural features that characterize many--although by no means all--independent agencies, such as staggered terms, multimember boards

at the top level, bipartisan composition, and independent budgetary or litigating authority, for-cause tenure protection is typically seen as necessary for independence, whether or not it is sufficient. On this view, independent agencies are different in structure because the President lacks authority to remove their heads from office except for cause.

Adrian Vermeule, *Conventions of Agency Independence*, 113 COLUM. L. REV. 1163, 1168-69 (2013) (footnotes, internal quotations, and alteration omitted).

Defendants' reliance on the *Scott, Waddell and Bennett* rulings is misplaced. The district court cited the *Waddell* ruling in its opinion and found that it was not controlling here. *July 23, 2019 District Court ruling, p. 3-4. App. 078-079*. Each of these three decisions is factually distinguishable from the present controversy. *Scott* was decided forty-five years before the enactment of Iowa Code chapter 216. Neither *Waddell* nor *Bennett* pertained to the removal of a civil rights commissioner.

D. The DCRC Is a Separate, Distinct, and Independent Legal Entity From the City of Davenport.

The City of Davenport has a local civil rights commission not because it chose to create it. The City of Davenport was required to create the DCRC and to make it an “independent ... commission.” The Iowa Legislature mandated that the City of Davenport “structure and adequately fund [DCRC] in order to effect cooperative undertakings with the [state commission] and to aid in effectuating the purposes of [the Iowa Civil Rights Act.]” Iowa Code § 216. 19(2).

The City of Davenport complied with the legislative mandate. Chapter 2.58 of the Davenport Municipal Code, “Civil Rights Commission,” fulfills § 216.19(2)’s mandate and creates the structure of, and rules for, the DCRC. Davenport Municipal Code § 2.58.010 sets forth DCRC’s purposes. The purposes in enacting the ordinance codified in this chapter are:

“ A. To secure for all individuals within the city freedom from discrimination because of race, color, religion, creed, sex, national origin or ancestry, familial status, marital status, age, mental or physical disability, gender identity, or sexual orientation, in connection with employment, public accommodations, housing, education, and credit, and thereby to protect the personal dignity of these individuals, to insure their full productive capacity, to preserve the public safety, health, and general welfare, and to promote the interests, rights and privileges of individual citizens within the city;

B. To provide for the execution within the city of the policies embodied in the Iowa Civil Rights Act of 1965 and in the Federal Civil Rights Act and to promote the cooperation between the city and the federal agencies enforcing those acts; and

C. To provide, at the local level, a civil rights commission dedicated to the effective enforcement of this chapter and to serve as a source of information to employers, landlords, businesses, laborers, tenants, and other citizens relative to various civil rights legislation and regulations.” App. 120.

§ 2.58.050, “Powers and duties,” sets forth the actions the DCRC is empowered and required to undertake to serve its purposes. § 2.58.050 of the Davenport City Code states:

“The commission shall have the following powers and duties. §2.58.050 states that:

A. To appoint and supervise a director of the civil rights commission and approve appointment of staff of the commission. Staff of the civil rights commission are employees of the commission. Even though they are employees of the commission, such staff will be entitled to receive the same fringe benefits, follow the same administrative procedures as city employees and will be entitled to receive all due process procedures not inconsistent with prevailing local, state and federal law available to other employees similarly situated.

B. To receive and cause the investigation of complaints alleging unfair or discriminatory practice;

C. To study the existence, character, causes and extent of practices of discrimination and unfair practices in this city against any group because of race, color, creed, religion, sex, national origin or ancestry, age, familial status, marital status, disability, gender identity, or sexual orientation and to attempt the elimination of such discrimination by education and conciliation.

D. To set standards for and certify thereafter, to the director, a list of eligible hearing officers who may conduct public hearings under this chapter, and such officers shall be attorneys.

E. To issue, amend or rescind suitable regulations not inconsistent with this chapter or law to carry out the provisions of this chapter. Regulations issued under this sub section or any amendments or rescission thereof shall be subject to public hearing before adoption with no less than fifteen days' notice of hearing to be published. Copies of proposed regulations, amendments or rescissions shall be placed on file with the city clerk's office for inspections by the general public prior to public hearing. Following the public hearing and certification of the final regulations, amendments or rescissions adopted by the commission, such regulations, amendments, or rescissions shall take effect within thirty days of approval by the commission.

F. To issue such publications and reports of investigations and research as in the judgment of the commission shall tend to promote good will among the various racial, religious, ethnic, and other groups within the city and which shall tend to minimize or eliminate discrimination in public accommodations, employment, apprenticeship and on-the-job training programs, vocational schools, housing, education, or credit because of race, creed, color, sex, familial status, marital status, national origin or ancestry, religion, disability, age or sexual orientation.

G. To prepare and transmit to the mayor and to the city council from time to time, but not less often than once each year, reports describing its proceedings and the work performed by the commission;

H. To make recommendations to the mayor and to the city council for such further legislation concerning discrimination because of race, creed, color, national origin or ancestry, religion, sex, familial status, marital status, age, disability or sexual orientation as it may deem necessary or desirable.

I. To cooperate within the limits of appropriations made for its operations with other agencies or organizations, both public and private, whose purposes are consistent with those of this chapter, and in the planning and conducting of programs designed to eliminate discrimination based on race, color, religion, creed, national origin or ancestry, sex, disability, age, familial status, marital status or sexual orientation.

J. To enter into contracts with federal, state, and other municipal civil rights agencies which would further the purposes of this chapter.

K. To work with and cooperate with the U.S. Equal Employment Opportunity Commission under sections 705, 706, 709, 710 and other appropriate sections of the Civil Rights Act of 1964 as amended;

L. To hold meetings at intervals of not less than one per month at a time and place to be determined by the commission;

M. To issue subpoenas and order discovery in aid of investigations and hearings of alleged unfair or discriminatory practices as provided by this chapter. The subpoenas and discovery may be ordered to the same extent and are subject to the same limitations as subpoenas and discovery in a civil action in district court in accordance with state law and the Iowa rules of civil procedure.” App.121.

Davenport Municipal Code § 2.58.180, “Appeal procedure,” states:

“A. Any complainant or respondent claiming to be aggrieved by a final order of the commission, including a refusal to issue an order, may obtain judicial review thereof, and the commission may obtain an order of court for the enforcement of commission orders in proceedings as provided in this section.

B. Such proceedings shall be brought in the district court of the district in the county in which the alleged discriminatory or unfair practice, which is the subject of the commission's order, was committed, or in which any respondent required in the order to cease or desist from a discriminatory or unfair practice or to take other affirmative action, resides, or transacts business.

C. Such proceedings shall be initiated by the filing of a petition in such court and the service of a copy thereof upon the commission and upon respondent or complainant. Thereupon the commission shall file with the court a transcript of the record of the hearing before it. The court shall have jurisdiction of the proceedings and the questions determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript an order enforcing, modifying and

enforcing as so modified, or setting aside the order of the commission, in whole or in part.

D. An objection that has not been urged before the commission shall not be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances.

E. Before the date set for hearing a petition for judicial review of the commission's final order, application may be made to the court for leave to present evidence in addition to that found in the record of the case. If it is shown to the satisfaction of the court that the additional evidence is material and that there were good reasons for the failure to present it in the contested case before the commission, the court may order that the additional evidence be taken before the commission upon conditions determined by the court. The commission may modify its findings and decision in the case by reason of the additional evidence and shall file that evidence and any modifications, new findings, or decisions with the reviewing court and mail copies of the new findings or decisions to all parties.

F. In proceedings for judicial review of the commission's final order, a court shall not itself hear any further evidence with respect to those issues of fact whose determination was entrusted by the provisions of this article to the commission.

G. The court may affirm the commission's final order or remand to the commission for further proceedings. The court shall reverse, modify, or grant any other appropriate relief from the commission's final order, equitable or legal and including declaratory relief, if substantial rights of the petitioner have been prejudiced because the commission's final order is:

1. In violation of constitutional or statutory provisions;
2. In excess of the statutory authority of the commission;
3. Made upon unlawful procedure;

4. Affected by error of law;
5. Unsupported by substantial evidence in the record made before the commission when that record is viewed as a whole; or
6. Unreasonable, arbitrary or capricious or characterized by an abuse of discretion or a clearly unwarranted exercise of discretion.

H. Reserved.

I. The commission may appear in court by its own attorney.

J. Unless otherwise directed by the commission or court, commencement of review proceedings under this section shall operate as a stay of any order.

K. Petitions filed under this section shall be heard expeditiously and determined upon the transcript filed without requirement for printing.

L. If no proceedings to obtain judicial review are instituted by a complainant or respondent within thirty days from the service of an order of the commission under section 2.58.180, the commission may obtain an order of the court for the enforcement of such order upon showing that respondent is subject to the jurisdiction of the commission and resides or transacts business within the county in which the petition for enforcement is brought.” App. 125.

The Legislature intended a commission like DCRC to be “independent.”

Use of this word in the same sentence in which it mandated that a city the size of the City of Davenport, with more than 29,000 in population, create and fund the DCRC must be interpreted to mean that the Legislature intended a commission like DCRC to be “independent” of the municipality required to create it. The Legislature also required that DCRC be structured in order to enable it to work

cooperatively with the ICRC and to effectuate the purposes of the Iowa Civil Rights Act. The Legislature also required that DCRC adopt rules pursuant to chapter 17A, Code of Iowa. Iowa Code § 216.19(2). Chapter 17A governs state administrative agencies; it does not apply to municipalities. The 17A rules procedure that are implemented by DCRC further supports the district court’s ruling that commissioners can only be removed for cause because they are similar to the state ICRC commissioners.

The DCRC, not the City of Davenport, appoints DCRC’s executive director and approves the hiring (by the executive director) of staff. Davenport City Code § 2.58.050(A). The executive director and staff are employees of DCRC, not the City of Davenport. § 2.58.070 lists the executive director’s power and duties and provides that the director is “directly responsible to and . . . reports to the commission and the commission may dismiss the director at any time by the affirmative vote of three-fourths of the members of the commission.” The executive director answers to the commission, not the municipality. The commission, not the municipality, has the power of hiring and firing of its employees.

The municipal code also imbues DCRC with the power of contract in order to work cooperatively with other civil rights commissions —including state and federal entities— to effectuate the public policies enumerated in the ICRA. The

Davenport municipal code also makes clear that DCRC is an investigative, prosecutorial, and adjudicative entity. DCRC has the power to issue subpoenas, to conduct and/or order discovery, to investigate allegations of unfair or discriminatory practices, to hold hearings on such allegations, and to issue decisions. DCRC has the power to seek enforcement of its decisions on allegations of unfair or discriminatory practices. Chapter 2.58 of the Davenport City Code clearly supports the district court's ruling of a for cause removal standard.

Persons or entities adversely affected by DCRC's decisions are entitled to judicial review of those decisions. In that event, the Davenport municipal code provides that DCRC may appear in court proceedings arising from DCRC's issuance of decisions "*by its own attorney.*" When there is a failure to comply with a conciliation agreement (§2.58.325(C)), DCRC may enforce that agreement in court and appear through counsel in doing so. DCRC also may appear in court through counsel when a person or party adversely affected by a final order of the DCRC under the fair housing provisions of the municipal code. § 2.58.350(F)(1) empowers DCRC to seek judicial enforcement of its civil orders.

Moreover, Iowa Administrative Code (IAC) Rule 161-1.6 defines local referral agencies and generally defines those agencies' powers. DCRC is an agency as defined by the ICRC administrative rule 161-1.6(2)(a), which provides that an agency is "any agency of municipal government established by ordinance for the

purpose of eliminating discrimination on any basis protected by the Act.” DCRC is a “referral agency” as defined in IAC rule 161-1.6(2)(c), which provides that a referral agency is “any agency of local government that has been awarded that status by contract with the commission.” DCRC’s website states that “[u]nder the power granted by the [Davenport Civil Rights] ordinance, the Davenport Commission enters a contract each year with the Iowa Civil Rights Commission to enforce state and local civil rights laws.” See https://cityofdavenportiowa.com/government/civil_rights (last visited March 12, 2020).

As an agency that contracts with the ICRC, DCRC has the power to “develop procedures with remedies necessary to ensure the protection of rights secured by the Iowa Civil Rights Act.” IOWA ADMIN. CODE, r. 161-1.6(1)(a). These procedures and remedies embodied in Iowa Code chapter 216 include those that protect against unfair employment practices, § 216.6; wage discrimination, § 216.6; unfair practices in accommodations and services, § 216.6; unfair or discriminatory practices in housing, § 216.8 and 216.8A; unfair or discriminatory practices in education, § 216.9; and unfair credit practices, § 216.10. App. 120-130.

Davenport City Code chapter 2.58, “Civil Rights Commission,” also specifically protects against unfair practices in employment, § 2.58.100; unfair

practices in accommodations and services, § 2.58.110; unfair credit practices, § 2.58.120; unfair education practices, § 2.58.125; and unfair housing practices, § 2.58.300-.380. The DCRC is empowered to enforce these prohibitions pursuant to Davenport Municipal Code § 2.58.010 and § 2.58.050. App.120-130.

These Iowa Code sections, administrative regulations and Davenport City Code sections all support a for cause removal standard of a commissioner. They further constitute “affirmative power[s] to enforce [the DCRC’s and ICRC’s] rules and regulations” which “carr[y] with it a concomitant power to defend them and resist their nullification in court.” *Kasperek v Johnson Cty Bd. of Health*, 288 N.W.2d,511, 515 (Iowa 1980). Granting enforcement and defense powers to a governmental entity is a key factor in judging whether it has the authority to act independently or whether it is subservient and controlled by a parental entity. *See Nibeck v. Marion Police Dep’t*, No. 16-CV-114-LRR, 2016 WL 6246782, at *8 (N.D. Iowa Oct. 25, 2016) (holding that the Marion Police Department could not be sued independently of the City of Marion because it “is not empowered to enforce its own rules and regulations” but is only “delegated authority by the City of Marion to exercise the enforcement powers granted to the city by Iowa law”; (contrasting the case with *Kasperek*).

It is clear from these provisions that DCRC is (1) independent of the City of Davenport, (2) hires its own employees, discharges its statutory obligations to,

among other things, enforce the ICRA through its own adjudicatory proceedings and through judicial review and enforcement proceedings, and (3) engages counsel when necessary to accomplish those tasks. An analysis of the statutory framework of these state, municipal and administrative code provisions show that DCRC Commissioners are quasi-judicial officers who cannot be removed from office without just cause.

The Iowa Supreme Court decided a DCRC lawsuit in 2019 where the DCRC was sued as a separate and independent legal entity, and the City of Davenport was not a party to the lawsuit. *Seeberger v. The Davenport Civil Rights Comm'n*, 923 N.W.2d 564 (Iowa 2019). Two more DCRC civil rights lawsuits that reached the Iowa Supreme Court with the DCRC as the real party in interest, and not the City, were *Botsko v. Davenport Civil Rights Comm'n*, 774 N.W.2d 841, 846 (Iowa 2009), and *Palmer Coll. of Chiropractic v. Davenport Civil Rights Comm'n*, 850 N.W.2d 326 (Iowa 2014). In none of these three cases was the City of Davenport named as a party to the lawsuit. This is true because DCRC is a separate, independent, and distinct legal entity from the City of Davenport. The fact that DCRC can sue and be sued as a separate legal entity under chapter 216 of the Iowa Code without the City's involvement is further rationale that a commissioner cannot be removed without cause.

Under the Davenport municipal code the Commission can bring an action against any **employer** who discriminates against a citizen. The definition of “Employer” includes “the city” and its “Mayor”. See Davenport City Code §2.58.030(1). App.120-130. Thus, chapter 2.58 of the Davenport City Code authorizes the DCRC to enforce the ICRA and the comparable provisions of the City Code against the City of Davenport or its Mayor, if the City or Mayor violates chapter 216 of the Iowa Code as a municipal employer. The Mayor may be a case respondent. This is another reason why the DCRC is separate and independent from the City of Davenport and why DCRC commissioners can only be removed from office for cause by the Mayor.

CONCLUSION

The District Court’s July 23, 2019 Ruling denying Summary Judgment to Defendants should be affirmed by the Iowa Supreme Court.

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Request for Oral Argument

Plaintiff-Appellant Nicole Bribriesco-Ledger requests oral argument.

CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Iowa R. App P. 6.903(1)(g)(l) because this Brief contains 8,271 words, excluding the parts of the brief exempted by Iowa R. App P. 6.903(1)(g)(l).

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

/s/ Michael J. Meloy
Michael J. Meloy

CERTIFICATE OF SERVICE AND FILING

I certify that on April 15, 2020, I filed Appellee's Final Brief with the Clerk of the Appellate Court by electronically filing the document through the EDMS Electronic Filing System.

I further certify that on April 15, 2020, I served Appellee's Proof Brief on the Appellants by electronically serving Appellee's counsel through the EDMS Electronic Filing System as follows:

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Certificate of Cost

I certify that there is no monetary cost for the printing of this Brief.

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