

IN THE SUPREME COURT OF IOWA  
Supreme Court No. 20-0477

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ROB SAND, Auditor of the State of Iowa

Applicant - Appellee,

vs.

JOHN DOE, in his official capacity, and  
UNNAMED STATE AGENCY, STATE OF IOWA

Defendant - Appellants.

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ON APPEAL FROM THE IOWA DISTRICT COURT  
OF POLK COUNTY (CVCV059696)  
THE HONORABLE HEATHER LAUBER, JUDGE

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APPELLEE'S SUPPLEMENTAL BRIEF

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SUPPLEMENTAL

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**STATEMENT OF THE ISSUE PRESENTED  
FOR REVIEW**

- I. THE ARGUMENTS OF AMICUS CURIAE  
SHOULD BE REJECTED BECAUSE IOWA CODE  
§ 679A.19 IS NOT APPLICABLE TO THIS CASE**

## ARGUMENT

### **I. THE ARGUMENTS OF AMICUS CURIAE SHOULD BE REJECTED BECAUSE IOWA CODE § 679A.19 IS NOT APPLICABLE TO THIS CASE.**

#### **Merits.**

Contrary to the arguments of Amicus Curiae, the Auditor's ability to enforce the subpoena in this case is unfettered by Iowa Code § 679A.19. Amicus argues this matter is not properly before the Court because "Iowa Law requires a dispute between two administrative departments of state government to be resolved by binding arbitration, not the Courts." Ami. Br. at 6. This is wrong for at least three reasons. First, Iowa Code § 11.52 specifically gives the Auditor the ability to apply to a District Court for enforcement of a subpoena. Second, Iowa Code § 679A.19 is not applicable to Constitutional Officers. Finally, the attempt by Amicus to invoke subject matter jurisdiction as a procedural bar to judicial resolution is misplaced because Amicus has conflated the notion of "subject matter jurisdiction" with "authority," and the latter is not an issue that can be raised by an outside party at this stage of the case. The arguments of Amicus should be rejected.

**A. The Auditor Is Specifically Granted Authority to Enforce His Subpoenas in District Court.**

Iowa Code § 11.52 gives the Auditor the ability to apply to the District Court for enforcement of his subpoenas, a specific grant of authority that supersedes any general limitation imposed on inter-agency litigation. Amicus argues that the general prohibition on “[a]ny litigation between administrative departments, commissions or boards of the state government” in Iowa Code § 679A.19 prevents the Auditor from bringing this action. Ami. Br. at 6. However, it is axiomatic that a specific grant of authority supersedes any general limitation. *City of Des Moines v. City Dev. Bd. of State*, 633 N.W.2d 305, 311 (Iowa 2001). Amicus argues that “there is no specific authority for the state auditor to sue another entity of state government.” Ami. Br. at 19.

Amicus is wrong. Iowa Code § 11.52 expressly provides a mechanism for the Auditor to seek Court enforcement of a subpoena:

In case any witness duly subpoenaed refuses to attend, or refuses to produce documents, books, and papers, or attends and refuses to make oath or affirmation, or, being sworn or affirmed, refuses to testify, the auditor of state or the auditor's designee may apply to the district court, or any judge of said district having jurisdiction thereof, for the enforcement of attendance and answers to

questions as provided by law in the matter of taking depositions.

IOWA CODE § 11.52 (West)(emphasis added). Leaving aside the unsettled question of whether enforcing a lawful investigative subpoena constitutes “suing,” Chapter 11 specifically gives the Auditor the ability to enforce its subpoenas in District Court. In this case, the Auditor duly subpoenaed documents from a state official pursuant to Iowa Code § 11.51. The official refused to comply with that lawful subpoena. The Auditor applied to the District Court for enforcement, exactly as contemplated in Iowa Code § 11.52. The specific authorization in Chapter 11 allowing the Auditor to seek enforcement, whether for witnesses or documents, supersedes the general language of § 679A.19. Even if the Court concludes the arbitration statute applies to the Auditor in other circumstances, it must conclude that Chapter 11 specifically grants the Auditor the ability to enforce its subpoenas in District Court as has been done in this case.

**B. Iowa Code § 679A.19 does not apply to Constitutional Officers nor this action.**

The Court should also conclude that Iowa Code § 679A.19 does not apply to Constitutional Officers like the Auditor. Amicus erroneously argues that Iowa Code § 679A.19 prevents the Auditor

from bringing this action. *Ami. Br.* at 6. However, § 679A.19 applies to “administrative departments, commissions or boards of the state government,” but does not extend to “Offices.” Iowa law is clear in distinguishing between Constitutional Officers and other state agencies. When the legislature intends to include Officers in executive branch statutes, it does so explicitly.

The Iowa Supreme Court found this “obvious” when it stated that Constitutional Officers are not subject to § 679A.19:

It would be difficult for us to conclude that the office of attorney general falls within the proscription of § 679A.19, Code, prohibiting litigation concerning disputes between administrative departments, commissions or boards of the state government. We recognize the words ‘executive’ and ‘administrative’ are interchangeable and synonymous. However, the attorney general is a constitutional officer and obviously, in our judgment, the Legislature did not contemplate in the enactment of § 679A.19, Code, that executive officers should come within the proscription of the section.

*State ex rel. Turner v. Iowa State Highway Comm'n*, 186 N.W.2d 141, 145 (Iowa 1971), abrogated by *Rants v. Vilsack*, 684 N.W.2d 193 (Iowa 2004) (emphasis added). The *Turner* case involved a challenge brought by the Attorney General to the Governor’s line item veto. 186 N.W. 2d at 144. Before addressing the merits, the Court considered

whether it had “jurisdiction of the subject matter of an action instituted by the Attorney General of the state against” a State Agency, given the language of § 679A.19. *Id.* at 145. The Court concluded that the prohibitions of § 679A.19 “obviously” did not apply to Constitutional Officers. The *Turner* decision regarding line item veto was subsequently abrogated by another case that did not implicate or address this finding on § 679A.19. *Rants*, 684 N.W.2d 193. As a result, the *Turner* Court’s statements about the inapplicability of § 679A.19 to Constitutional Officers are instructive as opposed to precedential. However, what the *Turner* court found “obvious” is that Iowa Code has long and repeatedly recognized that Constitutional Officers, like the Attorney General and the Auditor, are separate and independent parts of the Executive branch, and thus not subject to the provisions of § 679A.19.

The requirement in § 679A.19 that disputes between “administrative departments, board, and commissions” of State Government be resolved through arbitration does not extend to “offices,” because the legislature did not include “offices” along with “departments, boards and commissions” in the statute. IOWA CODE § 679A.19. The formal structure of the Executive Branch is laid out in

Iowa Code Chapter 7E, which distinguishes between “Principal Administrative Units” and “Separate Constitutional Offices.” Iowa Code §7E.2 (noting the former are “departments” while the latter are “offices”). Iowa Code §7E.5 lists the Principal Departments of state government, and does not include the Treasurer, Attorney General, Auditor or Secretary of State. These positions are not “administrative departments” but rather “Separate Constitutional Offices” headed by a statewide elected Officer. IOWA CODE § 7E.2. Likewise, the Constitutional Offices are not “board[s]” or “commissions,” which are executive branch entities separately defined under Chapter 7E. IOWA CODE §§ 7E.6, 7E.8. Instead, the Offices are separate entities within the Executive Branch, wholly distinct from “departments, boards and commissions.” Compare IOWA CODE § 7E.2 to § 7E.6. Because they are not specifically included, the Offices are not subject to the provisions of § 679.19.

The absence of the word “office” in 679A.19 is telling and illustrates that Officers are not subject to its provisions. Iowa law is replete with examples of distinctions between Constitutional Officers and other state agencies. When the legislature intends to include Officers in executive branch statutes, it does so explicitly. The Statute

creating the Department of Administrative Services defines “state agency” as an “authority, board, commission, committee, council, department, or independent agency,” but specifically excludes “the office of the governor or the office of an elective constitutional or statutory officer.” IOWA CODE § 8A.101(1) (emphasis added); see also 129 IAC 8.1(8B) (stating “‘agency’ does not include the office of the governor or the office of an elective constitutional or statutory officer”). On the other hand, Officers are explicitly included in the definition of state agency for in other circumstances. See, e.g. IOWA CODE § 19B.1 (stating “‘State Agency’ means an office, bureau, division, department, board, or commission in the executive branch of state government”) (emphasis added); IOWA CODE § 256.50(1) (“‘State agency’ means a legislative, executive, or judicial office of the state and all of its respective officers, departments, divisions, bureaus, boards, commissions,”); IOWA CODE § 8G.3 (“‘Agency’ means a state department, office, board, commission,”); IOWA CODE § 68B.2 (“‘Agency of state government’ or ‘state agency’ means a department, division, board, commission, bureau, authority, or office of the executive or legislative branch of state government”); IOWA CODE § 17A.2 (“‘Agency’ ” means each board, commission, department,

officer or other administrative office or unit of the state”). In each of the forgoing statues, “offices” are listed separately along with “departments” “board” and “commissions.”

Departments, board and commissions are all specifically enumerated in § 679A.19, but offices are not included. This is what *Turner* Court found “obvious.” The failure to include “offices” or “officers” in § 679A.19 means Officers are not subject to its provisions. The exclusion of Offices from § 679.19 is for good reason. The Courts should not be clogged with disputes between entities that ultimately have the same boss: the Governor—hence disputes between departments, boards and commissions are subject to arbitration. But separately elected Constitutional Officers are independent, and separation of powers necessitates that their occasional legal disputes require a judicial resolution. For these reasons, the Court should conclude that Officers are not subject to Iowa Code §679.19.

**C. This Court has Subject Matter Jurisdiction.**

Finally, Amicus attempts to characterize its position as raising a question of subject matter jurisdiction, arguing that § 679A.19’s arbitration provisions create a jurisdictional bar to this case. Ami. Br.

at 5. The flaw in Amicus' position is in confusing subject matter jurisdiction for authority. Subject matter jurisdiction refers to the power of a court "to hear and determine cases of the general class to which the proceedings in question belong, not merely the particular case then occupying the court's attention." *Christie v. Rolscreen Co.*, 448 N.W.2d 447, 450 (Iowa 1989); *City of Des Moines v. Des Moines Police*, 360 N.W.2d 729, 730–31 (Iowa 1985). Iowa Code chapter 11 clearly confers jurisdiction on the district court to hear cases involving questions of enforcement of Auditor's subpoenas. IOWA CODE § 11.52. As a result, the Court has jurisdiction over the subject matter of this case. What Amicus argues is actually a question of "authority." The Iowa Supreme Court has explained the distinction:

Subject matter jurisdiction should not be confused with authority. "A court may have subject matter jurisdiction but for one reason or another may not be able to entertain a particular case. *Christie*, 448 N.W.2d at 450. In such a situation we say the court lacks authority to hear that particular case.

*State v. Mandicino*, 509 N.W.2d 481, 482 (Iowa 1993). Because the Court jurisdiction to hear cases involving Auditor's subpoenas generally, the question of whether or not § 679A.19 bars the Court from hearing this case is a question of "authority." Unlike questions of

subject matter jurisdiction which can be raised at any time and cannot be waived, a challenge to authority can be waived. *Mandicino*, 509 N.W.2d at 483 (holding “where subject matter jurisdiction exists, an impediment to a court's authority can be obviated by consent, waiver or estoppel”). In this case, Defendants have waived the issue of authority Amicus seeks to raise. Defendants did not raise the question of § 679A.19 nor was it addressed by the District Court. The Court should consider the issue of authority to be waived and affirm the District Court.

### **CONCLUSION**

The Court should reject the arguments of Amicus Curiae and conclude the Auditor is a Constitutional Officer not subject to the provisions of Iowa Code § 679A.19, and who is specifically granted the authority to enforce its subpoenas in Court. The Court should further conclude that the District Court properly enforced the subpoena at issue in this case, and affirm its order of enforcement.

Respectfully submitted,

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## **CERTIFICATE OF COMPLIANCE**

1. This brief complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(g)(1) or (2) because:
  - This brief contains 1,961 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).
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Dated: October 12, 2020

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