

SUPREME COURT No. 19-0094
POLK COUNTY No. CVCV057127

**IN THE
SUPREME COURT OF IOWA**

GARY DICKEY, JR.
Petitioner-Appellant,

v.

IOWA ETHICS AND CAMPAIGN DISCLOSURE BOARD
Respondent-Appellee.

*ON APPEAL FROM THE IOWA DISTRICT COURT
IN AND FOR POLK COUNTY
HONORABLE JEANIE VAUDT, DISTRICT COURT JUDGE*

REPLY BRIEF FOR APPELLANT

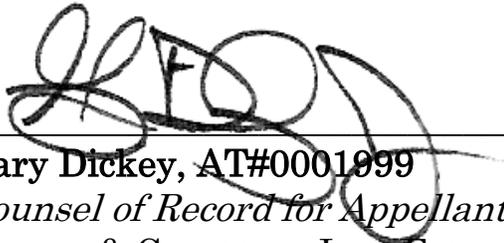
Gary Dickey
Counsel of Record
DICKEY & CAMPBELL LAW FIRM, PLC
301 East Walnut St., Ste. 1
Des Moines, Iowa 50309
PHONE: (515) 288-5008 FAX: (515) 288-5010
EMAIL: gary@dickeycampbell.com

PROOF OF SERVICE & CERTIFICATE OF FILING

On April 12, 2019, I served this reply brief on all other parties by EDMS to their respective counsel:

David Ranscht
Assistant Iowa Attorney General

I further certify that I did file this reply brief with the Clerk of the Iowa Supreme Court by EDMS on April 12, 2019.

A handwritten signature in black ink, appearing to read "G. Dickey", is written over a horizontal line. The signature is stylized and somewhat cursive.

Gary Dickey, AT#0001999
Counsel of Record for Appellant
DICKEY & CAMPBELL LAW FIRM, PLC
301 East Walnut St., Ste. 1
Des Moines, Iowa 50309
PHONE: (515) 288-5008 FAX: (515) 288-5010
EMAIL: gary@dickeycampbell.com

TABLE OF CONTENTS

	<u>Page</u>
TABLE OF AUTHORITIES	4
STATEMENT OF ISSUES PRESENTED FOR REVIEW	5
REPLY ARGUMENT.....	6
I. DICKY HAS INFORMATIONAL STANDING BY VIRTUE OF THE INJURY ARISING FROM THE BOARD’S REFUSAL TO REQUIRE THE KIM REYNOLDS FOR IOWA CANDIDATE COMMITTEE TO CORRECT A PLAINLY FALSE CAMPAIGN DISCLOSURE REPORT.....	6
A. <i>Akins</i> controls the standing analysis because the Iowa General Assembly specifically created a legal interest in the information and a right to judicial review.....	7
B. Dickey’s injury in fact is being deprived of the fair market value of North’s in-kind contribution, which the Iowa General Assembly has given him the statutory right to receive	11
II. THE CASE LAW UPON WHICH THE BOARD RELIES IS CLEARLY INAPPOSITE	14
CONCLUSION.....	21
COST CERTIFICATE & CERTIFICATE OF COMPLIANCE	22

TABLE OF AUTHORITIES

United State Supreme Court

<i>Buckley v. Valeo</i> , 424 U.S. 1 (1976).....	12
<i>FEC v. Akins</i> , 524 U.S. 11 (1998)	6, 9, 13

Iowa Supreme Court

<i>In re Bo Li</i> , 911 N.W.2d 423 (Iowa 2018)	11
---	----

Other Jurisdictions

<i>Alliance for Democracy v. FEC</i> , 335 F. Supp.2d 39 (D.D.C. 2004)	13
<i>Alliance for Democracy v. FEC</i> , 362 F. Supp. 2d 138 (D.D.C. 2005)	17
<i>Citizens for Responsibility and Ethics in Washington</i> <i>v. FEC</i> , 401 F.Supp.2d 115 (D.D.C. 2005)	17, 18
<i>Citizens for Responsibility & Ethics in Washington</i> <i>v. FEC</i> , 267 F. Supp.3d 50 (D.D.C. 2017)	19, 20
<i>Common Cause v. FEC</i> , 108 F.3d 413 (D.C. Cir. 1997)	15, 16
<i>Lindemann v. Comm’n on Gov’t Ethics and</i> <i>Election Practices</i> , 961 A.2d 538 (Me. 2008)	18, 19

OTHER AUTHORITIES:

2 U.S.C. § 434.....	9, 17, 18
2 U.S.C. § 437g.....	9, 10
2 U.S.C. § 441f.....	19
52 U.S.C. § 30104.....	12, 17, 18
52 U.S.C. § 30109.....	10
52 U.S.C. § 30122.....	19, 20
Iowa Code § 17A.19.....	8, 9, 11
Iowa Code § 68A.402A	<i>passim</i>
Iowa Code § 68B.32.....	6
Iowa Code § 68B.32D	8, 9
Iowa Code § 68B.33.....	<i>passim</i>

Cass R. Sunstein, *Informational Regulation and* *Informational Standing: Akins and Beyond*,

147 U. Pa. L. Rev. 613 (1999)	7, 8, 11, 12
-------------------------------------	--------------

STATEMENT OF ISSUES

WHETHER GARY DICKEY, JR. HAS INFORMATIONAL STANDING AS AN IOWA VOTER TO SEEK JUDICIAL RELIEF FROM THE IOWA ETHICS AND CAMPAIGN DISCLOSURE BOARD'S DECISION NOT TO INVESTIGATE THE KIM REYNOLDS FOR IOWA CANDIDATE COMMITTEE'S PLAINLY INCORRECT REPORT

Alliance for Democracy v. FEC, 335 F. Supp.2d 39 (D.D.C. 2004)
Alliance for Democracy v. FEC, 362 F. Supp. 2d 138 (D.D.C. 2005)
Buckley v. Valeo, 424 U.S. 1 (1976)
Citizens for Responsibility and Ethics in Washington
v. FEC, 401 F.Supp.2d 115 (D.D.C. 2005)
Citizens for Responsibility & Ethics in Washington
v. FEC, 267 F. Supp.3d 50 (D.D.C. 2017)
Common Cause v. FEC, 108 F.3d 413 (D.C. Cir. 1997)
FEC v. Akins, 524 U.S. 11 (1998)
In re Bo Li, 911 N.W.2d 423 (Iowa 2018)
Lindemann v. Comm'n on Gov't Ethics and
Election Practices, 961 A.2d 538 (Me. 2008)

2 U.S.C. § 434
2 U.S.C. § 437g
2 U.S.C. § 441f
52 U.S.C. § 30104
52 U.S.C. § 30109
52 U.S.C. § 30122
Iowa Code § 17A.19
Iowa Code § 68A.402A
Iowa Code § 68B.32
Iowa Code § 68B.32D
Iowa Code § 68B.33

Cass R. Sunstein, *Informational Regulation and*
Informational Standing: Akins and Beyond,
147 U. Pa. L. Rev. 613 (1999)

ARGUMENT

I. DICKEY HAS INFORMATIONAL STANDING BY VIRTUE OF THE INJURY ARISING FROM THE BOARD'S REFUSAL TO REQUIRE THE KIM REYNOLDS FOR IOWA CANDIDATE COMMITTEE TO CORRECT A PLAINLY FALSE CAMPAIGN DISCLOSURE REPORT

The Iowa General Assembly has expressly charged the Iowa Ethics and Campaign Disclosure Board to “investigate complaints relating to . . . the campaign practices of candidates for public office.” Iowa Code § 68B.32(1). Nevertheless, when Dickey presented the Board with a legally sufficient complaint, it punted. To defend its action, the Board takes the remarkable position that a voter suffers no injury when a gubernatorial candidate’s committee’s falsely reports the value of an in-kind contribution from the CEO of a large state vendor. Reduced to its core, the Board’s standing argument boils down to ignoring the United States Supreme Court’s analysis in *FEC v. Akins*, 524 U.S. 11 (1998).

The Board concedes, as it must, that Dickey would suffer informational injury under *Akins* if a candidate committee fails to report a contribution. The Board reasons, however, that as long

as the candidate committee discloses some information about the contribution—even if it is wrong and misleading—then no injury occurs.¹ (Board’s Br. at 15). The Board misses the central holding in *Akins*: a voter has informational standing to enforce a statute that (1) requires the disclosure of specific information and (2) creates the right to judicial review. Because both conditions are present in this case, Dickey has standing to challenge the Board’s dismissal.

A. *Akins* controls the standing analysis because the Iowa General Assembly specifically created a legal interest in the information and a right to judicial review

The United States Supreme Court’s standing analysis in *Akins* came in four parts. Cass R. Sunstein, *Informational Regulation and Informational Standing: Akins and Beyond*, 147 U. Pa. L. Rev. 613, 634 (1999). First, “prudential standing” was not an issue because Congress expressly granted standing to “any

¹ It bears repeating that if the Board is correct, no party would ever be injured from a falsely reported information. Concurrently, no party would ever be able to challenge the Board’s refusal to investigate a complaint for a false report. That means a sitting governor, for example, could intentionally underreport all in-kind contributions as \$1, and no person would have standing to seek judicial review of a Board that refuses to investigate.

party aggrieved.” *Id.* Second, the plaintiffs suffered injury in fact by virtue of their inability to obtain information that the FECA requires to be made public. *Id.* at 635. Third, the generalized character of the grievance was no obstacle with an express congressional grant of standing. *Id.* at 636. Fourth, the plaintiffs’ injury could be remedied by a decree in their favor. *Id.* at 636-37.

All four parts of *Akins* apply equally to this case. First, the Iowa General Assembly expressly granted judicial review to any person “who is aggrieved or adversely affected” by the agency’s action. Iowa Code § 17A19(1); *see also* Iowa Code § 66B.33 (expressly authorizing judicial review under Chapter 17A). Second, Dickey suffered injury in fact by his inability to obtain truthful information the ICDA requires to be made public. *Id.* § 68A.402A(1)(d) (requiring disclosure in publicly filed reports of the fair market value of in-kind contributions to candidate committees). Third, the generalized character of the grievance is no obstacle because of the statutory grant of judicial review. Fourth, Dickey can be remedied by a decree in his favor. *Id.* § 68B.32D(b),(c) (authorizing the Board to require candidate

committee to take remedial action to cure the violation and report information required by chapter 68A).

<i>FEC v. Akins</i> , 524 U.S. 11 (1998)	Dickey's Complaint
Any party aggrieved . . . may seek district court review of the dismissal. <i>Id.</i> at 19 (citing 2 U.S.C. § 437g(a)(8)(A)).	Any person . . . Who is aggrieved or adversely affected by any final agency action is entitled to judicial review thereof. Iowa Code 68B.33 (expressly authorizing judicial review under section 17A.19(1)).
FECA requires committees to file "complex FEC reports that include lists of donors . . . contributions, expenditures, and any other disbursements." <i>Id.</i> at 14 (citing 2 U.S.C. §§ 432-34).	ICDA requires committees to disclose the fair market value of in-kind contributions. Iowa Code § 68A.402A(1)(d).
"[T]he fact that [the informational injury] is widely shared does not deprive Congress of constitutional power to authorize its vindication in the federal courts." <i>Id.</i> at 24-25.	The fact that Dickey's information injury is widely shared does not deprive the Iowa General Assembly of its power to authorize its vindication in state courts.
"The courts in this case can 'redress' the 'injury in fact.'" <i>Id.</i> at 25.	The Board has the authority to require remedial action to cure the violation. Iowa Code § 68B.32D

Recognizing that *Akins* controls the standing analysis, the Board seeks to distinguish the case by suggesting that “[u]nlike

the FECA, chapter 68B contains no statute expressly authorizing complainants to seek judicial review if their complaint is dismissed.” (Board’s Br. at 20). This is demonstrably false. Iowa Code section 68B.33 provides that “[j]udicial review of the actions of the board may be sought in accordance with chapter 17A.” Iowa Code § 68B.33. There can be no meaningful dispute that the Board’s dismissal of Dickey’s complaint constitutes “action” for which section 68B.33 expressly provides for judicial review.

The Board is correct that the FECA contains language within the statute itself authorizing “[a]ny party aggrieved by an order of the Commission dismissing a complaint . . . [to] file a petition with the United States District Court for the District of Columbia.” *See* 2 U.S.C. § 437g(a)(8)(a) *transferred to* 52 U.S.C. § 30109(a)(8). The text of the ICDA, on the other hand, authorizes judicial review under the framework of chapter 17A, which provides that any “person or party . . . who is aggrieved or adversely affected by any final agency action may seek judicial review . . . by filing a petition either in Polk county district court or in the district court for the county in which the petitioner

resides.” Iowa Code § 17A.19(1),(2) *and* § 68B.33. Yet, it is a distinction without a difference. In both instances, the legislative branch expressly created a right to judicial review. If the Iowa General Assembly thought chapter 17A was sufficient alone to provide judicial review, it would have omitted section 68B.33 entirely. *In re Bo Li*, 911 N.W.2d 423, 428 (Iowa 2018) (noting that courts must interpret statutes in a way that avoid rendering parts of them superfluous).

B. Dickey’s injury in fact is being deprived of the fair market value of North’s in-kind contribution, which the Iowa General Assembly has given him the statutory right to receive

The Board next asserts that Dickey lacks informational standing because he has not been completely deprived of “qualitative categories of information.” (Board Br. at 21). Here again, the Board misreads *Akin*. “[T]he principal question for *Akins*, for purposes of ‘injury in fact,’ is whether Congress or any other source of law gives the litigant a right to bring suit.” Sunstein, 147 U. Pa. L. Rev. at 642-43. “[W]here Congress has created a legal interest and a right to bring suit, the Constitution does not stand as an obstacle.” *Id.* at 643. The Iowa General

Assembly provides Dickey with the statutory right to receive the fair market value of the in-kind contribution along with the right to bring suit when the Board makes a legal error that deprives him of that information.

In any event, the Board is incorrect to say that Dickey has not been deprived of qualitative information. Unlike the FECA, which only requires disclosure of *the existence* of an in-kind contribution, the ICDA specifically requires disclosure of *the value* of an in-kind contribution. *Compare* 52 U.S.C. § 30104 *with* Iowa Code § 68A.402A(1)(d). The Iowa General Assembly could have parroted the reporting requirements of the FECA. Instead it chose to require disclosure of the fair market value of an in-kind contribution in addition to other information. The only reasonable inference is the General Assembly believed voters should have right to know the value of the contribution in addition to its existence. That makes sense because the ICDA's disclosure requirements exist, in part, to allow voters like Dickey to evaluate and compare competing candidates for public office. *Buckley v. Valeo*, 424 U.S. 1, 66-67 (1976). Essential to this endeavor is that

voters like Dickey are provided with correct information so that he can make an apples-to-apples comparison of candidates' in-kind contributions. The Kim Reynolds for Iowa committee's reporting of North's contribution at below fair market value hinders Dickey's ability to compare corporate influence in her campaign with a competing candidate who accurately reports in-kind contributions. For this reason, statutory campaign disclosure requirements "establish[] a right *truthful information* regarding campaign contributions and expenditures, and that right adheres both before and after the election at issue." *Alliance for Democracy v. FEC*, 335 F. Supp.2d 39, 47-48 (D.D.C. 2004) (emphasis added) (citing *Akins*, 524 U.S. at 21).

As a practical matter, the information about North's in-kind contribution in the Kim Reynold's for Iowa report gives Dickey very little qualitative information. The report provides:

Schedule E: In Kind Contributions

Sch-E

Kim Reynolds for Iowa	Status: Filed	
Committee Type: Governor	Statutory Due Date	1/19/2018
County: _NA	Adjusted Due Date	
District: 0	Filed Date	1/19/2018 3:47:20 PM
Committee Code: 5173	Postmark Date	
Political Party: Republican	Amendment Date	3/6/2018 2:38:45 PM

Date	Name & Address of Contributor	Relationship to Candidate *(if applicable)	Description of in Kind Contribution	Estimated Fair Market Value	"X" for Fund-Raiser
------	-------------------------------	--	-------------------------------------	-----------------------------	---------------------

* * *

12/30/2017	North, David 300 Ensign Rd Bellevue, IA 52031	None	Travel Flight	\$2,880.00	
------------	---	------	------------------	------------	--

(Complaint Ex. 1). Contrary to the Board’s view, this information does not fully disclose the “nature of [the] contribution.” (Board’s Br. at 22). Nothing the report suggests that North’s contribution came in the form of private jet service. Indeed, the underreported value of \$2,800 would suggest just the opposite. The ICDA seeks to avoid this sort of obfuscation by requiring disclosure of the fair market value of the contribution. The failure to follow this requirement is what gives rise to Dickey’s injury.

II. THE FEDERAL CASE LAW UPON WHICH THE BOARD RELIES IS CLEARLY INAPPOSITE

The Board spills significant ink reciting a “litany of cases,” which are easily distinguishable. (Board’s Br. at 26). For

example, the Board cites to *Common Cause v. FEC*, 108 F.3d 413 (D.C. Cir. 1997), in which the complainant alleged that the National Republican Senatorial Committee and Montana Republican Party failed to accurately report contributions and expenditures. (Board’s Br. at 23-24). In a per curiam opinion, the D.C. Circuit raised the standing issue sua sponte and concluded that Common Cause lacked standing for three reasons. *Common Cause*, 108 F.3d at 416. First, the organization failed to articulate “the nature of the information of which its members and organization itself allegedly have been deprived.” *Id.* at 417. As the court explained, “[t]his failure is of no small moment, for the nature of the information allegedly withheld is critical to the standing analysis.” *Id.* Second, the court found that Common Cause’s alleged denial of access to “political information” does not confer standing because it had not shown how the information was “both useful in voting and required by Congress to be disclosed.” *Id.* at 417-18. Finally, the court held that it lacked informational standing because the remedy it sought consisted entirely of

“monetary penalties . . . rather than disclose[sure of the] information.” *Id.* at 418.

Dickey’s complaint suffers from none of these deficiencies. For starters, the remedy he seeks is accurate reporting of North’s in-kind contribution; not monetary penalties. Furthermore, he does not assert organizational standing, nor does he seek political information. Instead, he seeks information required by law to be disclosed to help him evaluate gubernatorial candidates. In this regard, *Common Cause* actually supports his standing argument. In the decision, the D.C. Circuit of Appeals posited that if “Common Cause [had asserted] an interest in knowing *how much money a candidate spent in an election*, infringement of such interest may, under *Akins*, constitute a legally cognizable injury in fact.” *Id.* (emphasis added). The court’s observation correctly recognizes that the deprivation of information concerning the value of an item required to be disclosed confers informational standing onto a voter. That is precisely the nature of the injury upon which Dickey relies.

The Board's reliance on *Citizens for Responsibility and Ethics in Washington v. FEC*, 401 F.Supp.2d 115 (D.D.C. 2005) ("CREW I"), fails for similar reasons. (Board's Br. at 24). In that case, CREW filed a complaint alleging, among other things, that President George W. Bush's 2004 presidential campaign did not report the receipt of a mailing list from the Americans for Tax Reform as an in-kind contribution pursuant to 2. U.S.C. section 434(a)-(b). *Id.* at 116-17. The district court dismissed the judicial complaint on four grounds. First, as an organization, CREW lacked standing because neither it, nor its members participate in the election process. *Id.* at 120-21. For this reason, "CREW [was] simply the wrong party to seek redress for the injury that [had] allegedly been suffered." *Id.* at 121. Second, section 434 did not require the committee to disclose a monetary value for the in-kind contribution. *See* 2 U.S.C. 434(a)-(b) (2003) *transferred to* 52 U.S.C. § 30104.² Accordingly, "CREW [had] already received that to which it [was] entitled under the administrative process." *Id.*

²The difference between section 434(b) and Iowa Code section 68A.402A(1)(d) also explains why *Alliance for Democracy v. FEC*, 362 F. Supp. 2d 138 (D.D.C. 2005), is inapplicable.

Third, “CREW did not seek to know the precise dollar value of the list,” but merely sought to “get the bad guys.” *Id.* at 122. Fourth, CREW could not “identify exactly how its alleged lack of access to the precise value of the contact list has impeded its programmatic activities.” *Id.* at 122-23.

None of these shortcomings exist in this case. Dickey does not argue for organizational standing. The remedy he seeks is for the disclosure of accurate information so that he can fairly evaluate competing gubernatorial candidates. Most importantly, the text of section 434 of the FECA does not require a committee to provide a monetary value for an in-kind contribution whereas section 68A.402A(1)(d) of the ICDA expressly requires disclosure of the “fair market value” of North’s in-kind contribution.

Compare 2 U.S.C. § 434(a),(b) *with* Iowa Code § 68A.402(A)(1)(d).

The Board also makes passing reference to *Lindemann v. Comm’n on Gov’t Ethics and Election Practices*, 961 A.2d 538 (Me. 2008), which is also distinguishable because Maine’s campaign statutes contain “no express provision . . . allowing or precluding judicial review of Commission enforcement determinations.” *Id.*

at 542. In contrast, chapter 68B of the Iowa Code specifically grants Dickey the right to judicial review. Iowa Code § 68B.33. Moreover, unlike the Board in this case, Maine’s agency “accepted Lindemann’s request and undertook an extensive investigation that included oral testimony at Commission meetings and review of extensive written submissions and documents.” In this case, the Board dismissed Dickey’s complaint as legally insufficient *without any investigation* on the basis of an erroneous interpretation of the law. (App. at 10-11).

Lastly, the Board cites *Citizens for Responsibility & Ethics in Washington v. FEC*, 267 F. Supp.3d 50 (D.D.C. 2017) (“CREW IV”), which has even less relevance—if any at all. (Board Br. at 25). In *CREW IV*, the complainant alleged that Murray Energy coerced its employees into making contributions to its political action committee. *Id.* at 51. CREW contended that the source of the contributions was really Murray Energy, and therefore, the PAC’s reports violated 2 U.S.C. section 441f, which provides that “[n]o person shall make a contribution in the name of another person.” *Id.* at 54 (citing 2 U.S.C. § 441f *transferred to* 52 U.S.C. §

30122). The district court rejected CREW’s information standing arguments on two grounds. First, while section 441f prohibits misreporting the source of contributions, it does “entitle[] them to information in any reasonably direct way.” *Id.* “Hence, plaintiffs cannot plausibly allege that an FEC enforcement action . . . would require Murry Energy PAC to disclose any information.” *Id.* Second, CREW failed to identify what it “would use that information for in this case in particular . . . [or] how such information about the contributors to Murray Energy PAC would help plaintiffs evaluate candidates or causes.” *Id.* at 54-55.

Neither defect applies to Dickey’s complaint. That statute upon which he relies expressly requires the Kim Reynolds for Iowa candidate committee to report the information he seeks. *See* Iowa Code § 68A.402(A)(1)(d).³ And, Dickey has demonstrated that he relies upon the information to evaluate candidates. (App.

³ Iowa has a comparable statute to 2 U.S.C. section 441f, which declares that a “person shall not make a contribution or expenditure in the name of another person.” Iowa Code § 68A.502(1). Dickey does not bring his complaint under that section.

at 29). Consequently, *CREW IV* provides no authority—
persuasive or otherwise.

CONCLUSION

Gary Dickey, Jr. asks this Court to reverse the district
court's decision and remand with appropriate instructions.

COST CERTIFICATE

I hereby certify that the costs of printing the Appellant's brief was \$8.25, and that that amount has been paid in full by me.

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) or (2) because:

this brief has been prepared in a proportionally spaced typeface using Century in 14 point and contains 2,774 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(*g*)(1)



Gary Dickey, AT#0001999

Counsel of Record for Appellant

DICKEY & CAMPBELL LAW FIRM, PLC

301 East Walnut St., Ste. 1

Des Moines, Iowa 50309

PHONE: (515) 288-5008 FAX: (515) 288-5010

EMAIL: gary@dickeycampbell.com