

**IN THE SUPREME COURT OF IOWA**

---

**No. 18-2201**  
**Scott County No. CVCV297911**

---

**DARREN PETRO,**  
Petitioner-Appellant,

**vs.**

**PALMER COLLEGE OF CHIROPRACTIC,**  
Respondent-Appellee,

---

APPEAL FROM THE IOWA DISTRICT COURT  
FOR SCOTT COUNTY  
HONORABLE STUART WERLING  
HONORABLE MARY E. HOWES

---

**FINAL BRIEF FOR AMICUS CURIAE IOWA LEAGUE OF CIVIL AND  
HUMAN RIGHTS AGENCIES**

---

**Latrice L. Lacey**  
On Behalf of Iowa League of Civil and  
Human Rights Agencies  
226 West 4<sup>th</sup> Street  
Davenport, IA 52801  
Ph. (563) 326-7888  
Fax (563) 326-7959  
[llacey@ci.davenport.ia.us](mailto:llacey@ci.davenport.ia.us)

**TABLE OF CONTENTS**

TABLE OF CONTENTS.....2

TABLE OF AUTHORITIES .....4

STATEMENT OF THE ISSUES PRESENTED FOR REVIEW .....6

ROUTING STATEMENT.....10

STATEMENT REQUIRED BY IOWA R. APP. P. 6.906(4)(d) .....10

Interests of Amicus Curiae.....10

ARGUMENT .....13

I. The Iowa Legislature has Conferred Subject Matter Jurisdiction on Iowa District Courts for Discrimination Causes of Action. ....13

    A. The Iowa Legislature has Granted Local Civil Rights Commissions the Procedural Authority to Issue an Administrative Release or Right to Sue Through the Iowa Civil Rights Act .....14

    B. The Procedural Prerequisite for Exhaustion of Administrative Remedies to Pursue a Civil Rights Claim in District Court Does Not Preclude Subject Matter Jurisdiction.....16

II. The Iowa Legislature Has Authorized Local Commissions to Issue an Administrative Release to Pursue a Civil Rights Claim in District Court. ....18

    A. There is Nothing Within the ICRA That Expresses an Intent to Limit Local Commission’s Authority to Enforce the Act. ....19

III. The Davenport Civil Rights Commission’s Status as a Designated Referral/Deferral Agency Further Qualifies it to Enforce the ICRA. ....21

IV. There is Nothing Within the ICRA to Indicate a Restriction of Municipal Authority to Issue an Administrative Release for Rights Protected Under a Local Ordinance Which Are Not Protected Under the ICRA. ....23

V. The Court Has Not Interpreted the Iowa Civil Rights Act to Restrict Local Agencies Ability to Confer Original Jurisdiction Upon the District Court.....25

VI. The Iowa Civil Rights Act Requires Local Agencies to Allow for an Administrative Release to Pursue A Claim in District Court.....29

VII. ... The District Court Interpretation of the Authority of Local Commissions and Irreconcilable with ICRA.....30

    A. The Interpretation of a Restriction of Municipal Authority to Issue an Administrative Release to Complainant’s Who Have Their Rights Under a Local Ordinance Issued, But Permission for the Protections Available Under the ICRA Raises Equal Protection Concerns. ....32

VIII. The Legislature Has Recognized that a Final Action of a Local Commission Should be the Viewed the Same as a Final Action from the ICRC. ..33

IX. The ICRA Does Not Require Local Commissions to Hold a Public Hearing on all Claims Not Protected Under the Act. ....34

X. The Legislature Intended to Allow the Commission to Utilize Discretion in Determining Which Cases to take to Public Hearing. ....35

CONCLUSION .....36

CERTIFICATE OF COMPLIANCE.....37

## TABLE OF AUTHORITIES

### Cases

<i>Baker v. City of Iowa City</i> , 750 N.W.2d 93, 100-01 (Iowa 2008).....	22
<i>Baker v. City of Iowa City</i> , 750 N.W.2d 93, 102 (Iowa 2008) .....	23, 24
<i>Cedar Rapids Human Rights Com. v. Cedar Rapids Cmty. Sch. Dist.</i> , 222 N.W.2d 391, 402 (Iowa 1974).....	26, 27, 28, 29
<i>Estabrook v. Iowa Civil Rights Com.</i> , 283 N.W.2d 306, 309-11 (Iowa 1979).....	33
<i>Godfrey v. State</i> , 898 N.W.2d 844, 874 (Iowa 2017) .....	16, 18
<i>Goodell v. Humboldt Cty.</i> 575 N.W.2d 486, 503-04 (Iowa 1998) .....	7, 27
<i>Green v. City of Cascade</i> , 231 N.W.2d 882, 890 (Iowa 1975).....	30
<i>Holding v. Franklin County Zoning Bd. of Adjustment</i> , 565 N.W.2d 318, 319 (Iowa 1997) .....	15
<i>Hollinrake v. Monroe Cty.</i> , 433 N.W.2d 696, 697-98 (Iowa 1988) .....	31
<i>Iowa City v. Westinghouse Learning Corp.</i> , 264 N.W.2d 771, 773 (Iowa 1978) .....	passim
<i>Jacobi v. High Point Label, Inc.</i> , 442 F. Supp. 518 (M.D.N.C. 1977).....	9, 34
<i>Johnson v. Butler Brothers</i> , 162 F.2d 87, 88 (8th Cir. 1947) .....	34
<i>Keokuk Cty. v. H.B.</i> , 593 N.W.2d 118, 122 (Iowa 1999) .....	6, 15, 16
<i>Klein v. Dubuque Human Rights Comm'n</i> , 829 N.W.2d 190 (Iowa Ct. App. 2013)8, 32	
<i>McQuiston v. City of Clinton</i> , 872 N.W.2d 817, 830 (Iowa 2015) .....	31, 32
<i>Palmer Coll. of Chiropractic v. Davenport Civil Rights Comm'n</i> , 850 N.W.2d 326, 332 (Iowa 2014).....	6, 9, 16, 35
<i>Racing Ass'n of Cent. Iowa v. Fitzgerald</i> , 675 N.W.2d 1, 7 (Iowa 2004).....	8, 31
<i>Renda v. Iowa Civil Rights Comm'n</i> , 784 N.W.2d 8, 10 (Iowa 2010).....	16, 35
<i>Simon Seeding &amp; Sod, Inc. v. Dubuque Human Rights Comm'n</i> , 895 N.W.2d 446 (Iowa 2017).....	23, 32
<i>Smith v. ADM Feed Corp.</i> , 456 N.W.2d 378, 381 (Iowa 1990) .....	17, 18
<i>United Farm Bureau Mut. Ins. Co. v. Metropolitan Human Relations Comm'n</i> , 24 F.3d 1008, 1010-11 (7th Cir. 1994).....	7, 21
<i>Van Meter Indus. v. Mason City Human Rights Comm'n</i> (Iowa Ct. App. Apr. 4, 2003) .....	19, 23
<i>Varnum v. Brien</i> , 763 N.W.2d 862, 882 (Iowa 2009) .....	8, 31

**Statutes**

29 U.S.C. § 626(c) .....9, 34  
Dav. Mun. Ord. § 2.58.090(D)(2019).....34  
Iowa Code § 17A.19(10)(2019).....32  
Iowa Code § 17A.2(5) (2019).....34  
Iowa Code § 216.18(2019) ..... 23, 24  
Iowa Code § 216.19 (2019). .....32  
Iowa Code § 216.19(1)(2019)..... 14, 22, 27  
Iowa Code § 216.19(3) (2019)..... 6, 13, 14  
Iowa Code § 216.19(3)(2019).....19  
Iowa Code § 216.19(4)(2019)..... 19, 20  
Iowa Code § 216.19(8)(2019)..... 18, 20  
Iowa Code 216.19(1)(2019).....17  
Iowa Code section 17A.19(10)(2019) .....16

**Administrative Code**

Iowa Admin. Code r. 161-1.6 (3)(2019)..... 16, 17  
Iowa R. App. P. 6.1101(3) .....7

**Secondary Sources**

*Implications of the Right-to-Sue Amendment to Iowa's Civil Rights Law*, 65 Iowa  
L. Rev. 720, 725-36 (1980).....15

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

### **I. The Iowa Legislature has Conferred Subject Matter Jurisdiction on Iowa District Courts for Discrimination Causes of Action.**

Iowa Code 216.19(1)(c)(2019)

#### **A. The Iowa Legislature has Granted Local Civil Rights**

**Commissions the Procedural Authority to Issue an Administrative Release or Right to Sue Through the Iowa Civil Rights Act**

Iowa Civil Rights Act

Iowa Code § 216.19(3) (2019)

Iowa Code § 216.19(1)(2019)

#### **B. The Procedural Prerequisite for Exhaustion of Administrative Remedies to Pursue a Civil Rights Claim in District Court Does Not Preclude Subject Matter Jurisdiction.**

*Godfrey v. State*, 898 N.W.2d 844, 874 (Iowa 2017)

*Keokuk Cty. v. H.B.*, 593 N.W.2d 118, 122 (Iowa 1999); *see Holding v. Franklin County Zoning Bd. of Adjustment*, 565 N.W.2d 318, 319 (Iowa 1997)

*Keokuk Cty. v. H.B.*, 593 N.W.2d 118, 122 (Iowa 1999)

*Palmer Coll. of Chiropractic v. Davenport Civil Rights Comm'n*, 850 N.W.2d 326, 332 (Iowa 2014)

*Renda v. Iowa Civil Rights Comm'n*, 784 N.W.2d 8, 10 (Iowa 2010)

Iowa Code section 17A.19(10)(2019)

*Smith v. ADM Feed Corp.*, 456 N.W.2d 378, 381 (Iowa 1990)

### **II. The Iowa Legislature Has Authorized Local Commissions to Issue an Administrative Release to Pursue a Civil Rights Claim in District Court.**

*Godfrey v. State*, 898 N.W.2d 844, 874 (Iowa 2017)

*Smith v. ADM Feed Corp.*, 456 N.W.2d 378, 381 (Iowa 1990), citing,

*Implications of the Right-to-Sue Amendment to Iowa's Civil Rights Law*, 65 Iowa L. Rev. 720, 725-36 (1980)

Iowa Code 216.16(2019)

Iowa Code 216.19(1)(2019)

Iowa Code § 216.19(8)(2019)

#### **A. There is Nothing Within the ICRA That Expresses an Intent to Limit Local Commission's Authority to Enforce the Act.**

*Van Meter Indus. v. Mason City Human Rights Comm'n*, 675 N.W.2d 503, 515-16 (Iowa 2004)

Iowa Code § 216.19(3)(2019)

Iowa Code § 216.19(4)(2019)

Iowa Code § 216.19(8)(2019)

**III. The Davenport Civil Rights Commission's Status as a Designated Referral/Deferral Agency Further Qualifies it to Enforce the ICRA.**

*United Farm Bureau* at 1011 n.3.

Iowa Admin. Code r. 161-1.6 (3)(2019)

Iowa Code § 216.19(4)(2019).

**IV. There is Nothing Within the ICRA to Indicate a Restriction of Municipal Authority to Issue an Administrative Release for Rights Protected Under a Local Ordinance Which Are Not Protected Under the ICRA.**

*Baker v. City of Iowa City*, 750 N.W.2d 93, 100-01 (Iowa 2008)

*Baker v. City of Iowa City*, 750 N.W.2d 93, 102 (Iowa 2008)

*Simon Seeding & Sod, Inc. v. Dubuque Human Rights Comm'n*, 895 N.W.2d 446 (Iowa 2017)

*Van Meter Indus. v. Mason City Human Rights Comm'n* (Iowa Ct. App. Apr. 4, 2003), vacated, 675 N.W.2d 503 (Iowa 2004)

Iowa Code § 216.18(2019)

Iowa Code § 216.19(1)(2019)

**V. The Court Has Not Interpreted the Iowa Civil Rights Act to Restrict Local Agencies Ability to Confer Original Jurisdiction Upon the District Court.**

*Cedar Rapids Human Rights Com. v. Cedar Rapids Cmty. Sch. Dist.*, 222 N.W.2d 391, 402 (Iowa 1974)

*Cedar Rapids Human Rights Commission v. Cedar Rapids Community School District*, 222 N.W.2d 391, 399 (Iowa 1974)

*Goodell v. Humboldt Cty.* 575 N.W.2d 486, 503-04 (Iowa 1998)

*Iowa City v. Westinghouse Learning Corp.*, 264 N.W.2d 771, 773 (Iowa 1978)

Iowa Code § 216.19(1)(2019)

**VI. The Iowa Civil Rights Act Requires Local Agencies to Allow for an Administrative Release to Pursue A Claim in District Court.**

*Cedar Rapids Human Rights Com. v. Cedar Rapids Cmty. Sch. Dist.*, 222 N.W.2d 391, 400 (Iowa 1974)

*City of Iowa City v. Westinghouse Learning Corporation*, 264 N.W.2d 771 (Iowa 1978)

*Iowa City v. Westinghouse Learning Corp.*, 264 N.W.2d 771, 773 (Iowa 1978)

*Molitor v. Cedar Rapids*, 360 N.W.2d 568, 570 (Iowa 1985)

**VII. The District Court Interpretation of the Authority of Local Commissions and Irreconcilable with ICRA**

*Green v. City of Cascade*, 231 N.W.2d 882, 890 (Iowa 1975)

*Iowa City v. Westinghouse Learning Corp.*, 264 N.W.2d 771, 773 (Iowa 1978)

Iowa Code §216(2019)

Iowa Code §364.6(2019)

Iowa Code §364.2(2019)

**A. The Interpretation of a Restriction of Municipal Authority to Issue an Administrative Release to Complainant's Who Have Their Rights Under a Local Ordinance Issued, But Permission for the Protections Available Under the ICRA Raises Equal Protection Concerns.**

*Hollinrake v. Monroe Cty.*, 433 N.W.2d 696, 697-98 (Iowa 1988)

*McQuiston v. City of Clinton*, 872 N.W.2d 817, 830 (Iowa 2015)

*Varnum v. Brien*, 763 N.W.2d 862, 882 (Iowa 2009) (quoting *Racing Ass'n of Cent. Iowa v. Fitzgerald*, 675 N.W.2d 1, 7 (Iowa 2004))

**VIII. The Legislature Has Recognized that a Final Action of a Local Commission Should be the Viewed the Same as a Final Action from the ICRC.**

*Botsko v. Davenport Civil Rights Comm'n*, 774 N.W.2d 841, 844 (Iowa 2009)

*Klein v. Dubuque Human Rights Comm'n*, 829 N.W.2d 190 (Iowa Ct. App. 2013) *citing* Iowa Code § 17A.19(10)

*Simon Seeding & Sod, Inc. v. Dubuque Human Rights Comm'n*, 895 N.W.2d 446, 455 (Iowa 2017) *citing* Iowa Code § 216.19 (2019)

**IX. The ICRA Does Not Require Local Commissions to Hold a Public Hearing on all Claims Not Protected Under the Act.**

*City of Iowa City v. Westinghouse Learning Corp.*, 264 N.W.2d 771 (Iowa 1978); 29 U.S.C. § 633

*Estabrook v. Iowa Civil Rights Com.*, 283 N.W.2d 306, 309-11 (Iowa 1979)

*Jacobi v. High Point Label, Inc.*, 442 F. Supp. 518 (M.D.N.C. 1977); *see*

*Johnson v. Butler Brothers*, 162 F.2d 87, 88 (8th Cir. 1947)

29 U.S.C. § 626(c)

**X. The Legislature Intended to Allow the Commission to Utilize Discretion in Determining Which Cases to take to Public Hearing.**

*Palmer Coll. of Chiropractic v. Davenport Civil Rights Comm'n*, 850 N.W.2d 326, 332 (Iowa 2014).

*Renda v. Iowa Civil Rights Comm'n*, 784 N.W.2d 8, 10 (Iowa 2010)

Dav. Mun. Ord. § 2.58.090(D)(2019)

Iowa Code § 17A.2(5) (2019)

Iowa Code section 17A.19(10) (2019)

## **ROUTING STATEMENT**

This is a case suitable for transfer to the court of appeals under Iowa R. App. P. 6.1101(3) as it presents the application of existing legal principles.

### **STATEMENT REQUIRED BY IOWA R. APP. P. 6.906(4)(d)**

No party or party's counsel authored this brief in whole or in part nor contributed money to fund the preparation or submission of this brief. No other person contributed money to fund the preparation or submission of this brief.

### **Interests of Amicus Curiae**

Amicus curiae, the League of Iowa Human Rights Agencies, Inc. ("League"), is a statewide non-profit corporation organized for the following purposes, among others:

- 1) To eliminate prejudice, bigotry and discrimination in Iowa
- 2) To strengthen civil rights enforcement in Iowa
- 3) To protect the rights of the citizens of this state secured by the Iowa Civil Rights Act
- 4) To coordinate investigations and conciliations in order to expedite claims of unlawful discrimination
- 5) To eliminate needless duplication of case processing.

Membership in the League consists of state, county and municipal governmental agencies or commissions in Iowa created specifically to encourage equal opportunity and non-discrimination. Member agencies and commissions

are tasked with enforcing civil rights protections ensured under local, state and federal law. Founded in 2002 the League of Iowa Human & Civil Rights Agencies believes that no one should experience discrimination in the areas of employment, public accommodation (public services and buildings), housing, education, and credit. The League's mission includes taking affirmative steps to ensure that these rights are protected and the organization has an interest in ensuring that governing legislation is construed broadly to effectuate the purpose of the law.

Amicus has an important interest in the outcome of this case as the district court's limited interpretation of the Iowa Civil Rights Act, if upheld, would significantly and negatively impact the rights of Iowa residents to be free from discrimination, and the efficiency of the administrative and judicial process. Specifically, the lower court's interpretation of Chapter 216 of the Iowa Code severely restricts the rights of individuals to seek prompt remedial action through judicial enforcement.

The volume of cases processed by each agency creates the need for administrative release options that allows individuals the opportunity to pursue a hearing on the merits of their case in the District Court as a more expedient remedy than waiting on the completion of an administrative investigation. Enacting barriers to timely access to the District Court subjects victims of discrimination to further disenfranchisement and discriminatory treatment and increases the risk that



enforcement of non-discrimination will be further manipulated through the political process.

The trauma of discrimination is perpetuated by the loss of statutory and constitutional rights to equal and fair treatment—one of the most important aspects of living in a democratic society. Not only does discrimination result in economic challenges, including loss of income or housing, but it can also result in physical and mental health challenges, including injuries and disease related to the assault, shame, terror, depression, guilt, anxiety, addiction, and post-traumatic stress such treatment elicits.

## ARGUMENT

### **I. The Iowa Legislature has Conferred Subject Matter Jurisdiction on Iowa District Courts for Discrimination Causes of Action.**

The Iowa Legislature, through Chapter 216 of the Iowa Code, has established a cause of action for discrimination. The elements of a discrimination cause of action are: 1) being a member of a protected class; 2) suffering an adverse action; and 3) demonstrating that the adverse action was “because of” protected class status. The Legislature further makes it clear that nothing in Chapter 216 shall be construed as “limiting a city or local government from enacting any ordinance or other law which prohibits broader or different categories of unfair or discriminatory practices.” Iowa Code 216.19(1)(c). The Iowa Legislature also has conferred subject matter jurisdiction over discrimination causes of action on the Iowa District Courts and has set forth two procedural mechanisms for a victim of discrimination to exhaust administrative remedies before accessing the court: 1) by obtaining a final administrative decision on the merits that is subject to substantial evidence review, or 2) by obtaining a release from the administrative process so that the court may make a full determination on the merits in the first instance.

The district court in this case concludes that a discrimination cause of action under the ICRA that includes an element that is protected under local ordinance but

that is not included in the ICRA divests the court of subject matter jurisdiction over the discrimination cause of action. This conclusion rests on procedural confusion and has the consequence of divesting victims of discrimination of access to the opportunity for the court to make a full determination on the merits of their claim in the first instance as intended by the Iowa Legislature.

**A. The Iowa Legislature has Granted Local Civil Rights Commissions the Procedural Authority to Issue an Administrative Release or Right to Sue Through the Iowa Civil Rights Act**

The legislature has clearly outlined the intent and effect of the Iowa Civil Rights Act (ICRA) as it relates to the interaction between local commission and the Iowa Civil Rights Commission (ICRC). The ICRA states: “*An agency or commission of local government and the Iowa civil rights commission shall cooperate in the sharing of data and research, and coordinating investigations and conciliations in order to expedite claims of unlawful discrimination and eliminate needless duplication.*” The Iowa civil rights commission may enter into cooperative agreements with any local agency or commission to effectuate the purposes of this chapter. Such agreements may include technical and clerical assistance and reimbursement of expenses incurred by the local agency or commission in the performance of the agency’s or commission’s duties if funds for this purpose are appropriated by the general assembly.” Iowa Code § 216.19(3) (2019) (*emphasis*

*added*). This section is entitled “local laws *implementing this chapter*,” indicating that the legislature intended to confer the rights to take action under the ICRA to municipalities. *Id.* (*emphasis added*). The legislature clearly does not intend to require parties seeking to exercise their rights to judicial enforcement to go through a procedural minefield, thereby making it *more* complicated to seek relief under local ordinances than it would be under the ICRA. The victims of discrimination are unrepresented by counsel and often face financial and emotional burdens when pursuing their claims. The procedural avenues for redress whether through state or local action should be substantially similar. The express legislative intent requires cooperation between local commissions and the state to eliminate needless duplication, facilitating a more efficient procedure for seeking relief under state and local law. *Id.*

The ICRA states: All cities shall, to the extent possible, protect the rights of the citizens of this state secured by the ICRA. Nothing in this chapter shall be construed as indicating any of the following:

- a. An intent on the part of the general assembly to occupy the field in which this chapter operates to the exclusion of local laws not inconsistent with this chapter that deal with the same subject matter.
- b. An intent to prohibit an agency or commission of local government having as its purpose the investigation and resolution of violations of this chapter from developing procedures and remedies necessary to insure the protection of rights secured by this chapter.

c. Limiting a city or local government from enacting any ordinance or other law which prohibits broader or different categories of unfair or discriminatory practices. Iowa Code § 216.19(1)(2019).

This provision within the statute unequivocally states that local commissions are granted the authority to enforce a discrimination cause of action under the ICRA, while simultaneously conferring the authority to broaden the elements of that cause of action by including “broader or different categories of unfair or discriminatory practices.” The statute further conveys an expectation that local commissions will develop procedures and remedies that are consistent with the Act, which would include an administrative release.

**B. The Procedural Prerequisite for Exhaustion of Administrative Remedies to Pursue a Civil Rights Claim in District Court Does Not Preclude Subject Matter Jurisdiction.**

Generally, the exhaustion-of-remedies requirement does not implicate subject matter jurisdiction. *Keokuk Cty. v. H.B.*, 593 N.W.2d 118, 122 (Iowa 1999); *see Holding v. Franklin County Zoning Bd. of Adjustment*, 565 N.W.2d 318, 319 (Iowa 1997). The exhaustion-of-remedy doctrine does not preclude judicial review, but merely defers it until the administrative agency has made a final decision. *Id.* The legislature has given the district court subject matter jurisdiction to act in response to challenges to decisions made by administrative agencies, but requires this authority to be withheld until any available administrative remedies

have been exhausted. *Id.* The legislature requires that local commission decisions be entitled to judicial review. *Palmer Coll. of Chiropractic v. Davenport Civil Rights Comm'n*, 850 N.W.2d 326, 332 (Iowa 2014). Iowa Code section 17A.19(10) controls judicial review of an administrative agency decision, including those by local commissions. *Renda v. Iowa Civil Rights Comm'n*, 784 N.W.2d 8, 10 (Iowa 2010). This grant of jurisdiction to the district court to review a municipal agency decision further supports the grant of jurisdiction for an administrative release under the ICRA.

The requirement for exhaustion of administrative remedies prior to seeking judicial review, restricts the district court's authority to entertain a particular case, not an entire class of cases. *Keokuk Cty. v. H.B.*, 593 N.W.2d 118, 122 (Iowa 1999). The Court has stated, "It is clear from a reading of [the Act] that the procedure under the civil rights act is exclusive, and a claimant asserting a discriminatory practice must pursue the remedy provided by the act." *Godfrey v. State*, 898 N.W.2d 844, 874 (Iowa 2017). In this case, an available avenue of redress after exhausting the requisite administrative remedies is the option to receive an administrative release to pursue the claim in District Court. There is indication that the legislature intended to restrict local commission's ability to issue this release, further doing so would make local procedure inconsistent with the procedure of the ICRA.

Thus, while the Court has consistently interpreted the ICRA to restrict access to the District Court until the complainant has exhausted their administrative remedies, the Court has not determined that this implicates subject matter jurisdiction. The district court's jurisdiction is not procedurally triggered for a plaintiff in a civil rights action unless they first exhaust their administrative remedies. *Smith v. ADM Feed Corp.*, 456 N.W.2d 378, 381 (Iowa 1990)(overturned on other grounds). The Court in *Smith*, however, declined to add qualifying language to limit this requirement to actions under the ICRA or with the ICRC, clearly this requirement applies to all civil rights actions. *Id.*

## **II. The Iowa Legislature Has Authorized Local Commissions to Issue an Administrative Release to Pursue a Civil Rights Claim in District Court.**

Local commissions have authority to issue an administrative release or right to sue under the ICRA, Davenport Municipal Ordinance and pursuant to their contracts with the ICRC. The ICRA states: All cities shall, to the extent possible, protect the rights of the citizens of this state secured by the ICRA. Iowa Code 216.19(1). The option of seeking relief in the district court following a screening by the commission was added to relieve the backlog of cases before the commission. *Smith v. ADM Feed Corp.*, 456 N.W.2d 378, 381 (Iowa 1990), citing, *Implications of the Right-to-Sue Amendment to Iowa's Civil Rights Law*, 65 Iowa

L. Rev. 720, 725-36 (1980). The intent of the amendment was to allow the district court to sit as the commission and to empower it to grant relief authorized by the ICRA. *Id.* A district court has no jurisdiction over a plaintiff in a civil rights action unless he first exhausts his administrative remedies. *Smith v. ADM Feed Corp.*, 456 N.W.2d 378, 381 (Iowa 1990). The exhaustion prerequisite can be satisfied by filing with a local commission or the ICRC. Therefore, it follows that after meeting this requirement, complainants have a right to pursue the action in District Court.

The ICRA expressly states that the referral of a complaint by the ICRC to a referral agency or by a referral agency to the ICRC does not affect the right of a complainant to commence an action in the district court under section 216.16. Iowa Code § 216.19(8)(2019). The Court has stated, "It is clear from a reading of [the Act] that the procedure under the civil rights act is exclusive, and a claimant asserting a discriminatory practice must pursue the remedy provided by the act." *Godfrey v. State*, 898 N.W.2d 844, 874 (Iowa 2017). This action by the legislature created a statutory right for those seeking to pursue an action in district court to do so, conferring jurisdiction upon the district court for civil rights claims, if the administrative remedies are exhausted.

**A. There is Nothing Within the ICRA That Expresses an Intent to  
Limit Local Commission's Authority to Enforce the Act.**

The Supreme Court has repeatedly found that local commissions have the authority to decide complaints alleging discriminatory practices under the ICRA, and subject to the limitations of 216. *Van Meter Indus. v. Mason City Human Rights Comm'n*, 675 N.W.2d 503, 515-16 (Iowa 2004) There is nothing within the statute that conveys an intent to restrict local commissions ability to issue an administrative release or right to sue letter, which allows Complainant's the ability to pursue their actions in District Court. The ICRA clearly conveys the legislative intent to allow local commissions the authority to enforce the Act, including the legislative authority to enact local laws that will provide the same rights and remedies. The authorization given to the ICRC under ICRA is also conferred upon local agencies to enforce and take action under the ICRA. *Id.*

The ICRA grants the ICRC the authority to enter into cooperative agreements with any local agency or commission to effectuate the purposes of this chapter, allowing local commissions to act on its behalf to process a complaint. Iowa Code § 216.19(3)(2019). The ICRA states: A local agency or commission shall not be designated a referral agency unless the ordinance creating it provides the *same rights and remedies* as are provided in this chapter. The Iowa civil rights commission shall establish by rules the procedures for designating a referral agency and the qualifications to be met by a referral agency. Iowa Code § 216.19(4)(2019)(emphasis added). Referral agencies have the authority to act on

behalf of the ICRC, pursuant to the ICRA. The referral of a complaint by the Iowa civil rights commission to a referral agency or by a referral agency to the Iowa civil rights commission shall not affect the right of a complainant to commence an action in the district court under section 216.16. Iowa Code § 216.19(8)(2019). The legislature has clearly expressed that the referral and deferral of a complaint does not impact the ability of a complainant to receive an administrative release, thereby expressly permitting local commissions the authority to issue administrative release.

### **III. The Davenport Civil Rights Commission's Status as a Designated Referral/Deferral Agency Further Qualifies it to Enforce the ICRA.**

A local agency or commission shall not be designated a referral agency unless the ordinance creating it provides the same rights and remedies as are provided in this chapter. The Iowa civil rights commission shall establish by rules the procedures for designating a referral agency and the qualification. Iowa Code § 216.19(4)(2019).

The Commission has obtained referral status with the ICRC, EEOC (Equal Employment Opportunity Commission) and HUD (Department of Housing and Urban Development), a prerequisite to obtaining this status with both the state and federal counterparts is that there is a local law that provides substantially the same rights and remedies as the agency entering into the contract. The filing of a civil

rights complaint with a state or local civil rights agency that has a work-sharing agreement with a federal agency such as HUD or EEOC is indicative of the equivalency of the provisions of the state or local law to that of the corresponding federal law. The ICRC specifically looks at the substantive rights provided by the local law, as well as the local agency's procedures, the remedies available, and the availability of judicial review of local agency actions to see if they are "substantially equivalent" to those created by the federal Fair Housing Act. *United Farm Bureau* at 1011 n.3. The procedure for obtaining referral status with the ICRC is:

1.6(3) Procedure for obtaining referral status.

**a. Guidelines for designation.** The executive director will evaluate the applications of agencies and may designate agencies as referral agencies where they conform to the following guidelines:

- (1) The agency should have professional staff to enable it to comprehensively investigate complaints and to ensure the processing of the charges expeditiously.
- (2) *The ordinance or enabling legislation under which the agency is established must provide at a minimum the same rights and remedies to discrimination as available under the Act, and*

(3) The enabling legislation of the agency shall provide, at a minimum, that the agency may hold public hearings, issue cease and desist orders, and award damages to injured parties which shall include, but are not limited to, actual damages.

Iowa Admin. Code r. 161-1.6 (3)(2019)(emphasis added)

There is clear evidence that the legislature intends for local commissions to have the same rights and remedies as the ICRA. The intent of the legislature the ability to effectuate the purposes of the ICRA is also shown through the filing of a civil rights complaint with a state civil rights agency that has a work-sharing agreement with a local agency such as DCRC is indicative of the equivalency of the provisions of the state or local law to that of the corresponding federal law. ICRC specifically considers the substantive rights provided by the local law, as well as the local agency's procedures, the remedies available, and the availability of judicial review of local agency actions to see if they are entitled to deferral status. *Id.*

**IV. There is Nothing Within the ICRA to Indicate a Restriction of Municipal Authority to Issue an Administrative Release for Rights Protected Under a Local Ordinance Which Are Not Protected Under the ICRA.**

The Iowa Civil Rights expressly allows local commissions the authority to protect broader or different categories. Iowa Code § 216.19(1)(2019); *Baker v. City of Iowa City*, 750 N.W.2d 93, 100-01 (Iowa 2008). Restricting the available remedies for additional protected classes would be wholly inconsistent with the purpose of the ICRA. The Court has stated that the ICRA should be construed broadly to effectuate its purposes. *Simon Seeding & Sod, Inc. v. Dubuque Human Rights Comm'n*, 895 N.W.2d 446 (Iowa 2017). Restricting local agencies ability to issue an administrative relief would unequivocally limit the efficacy of local civil rights protections, eliminating an available remedy and method of seeking redress. Given that Iowa Code § 216.18 directs the courts to broadly construe the Act, the court must determine whether the Act is effectuated by limiting the avenues for relief available to a victim of discrimination. *Van Meter Indus. v. Mason City Human Rights Comm'n* (Iowa Ct. App. Apr. 4, 2003), vacated, 675 N.W.2d 503 (Iowa 2004). The variations between local law and state statute fall within the regulatory latitude the legislature bestowed on cities in section 216.19 to enact ordinances that prohibit "broader or different categories of unfair or discriminatory practices." *Baker v. City of Iowa City*, 750 N.W.2d 93, 102 (Iowa 2008). Because the municipal agencies have been given authority under section 216.19 to prohibit such conduct, it follows that they are permitted to offer the same rights and

remedies for prohibiting discrimination on the basis of that conduct as they are permitted to offer for conduct that violates the ICRA. *Id.*

The enactment of ordinances prohibiting discrimination on the basis of broader protected classes is not inconsistent with state law, and such ordinances are permitted within the City's home rule authority. *Id.* The statute cannot be read to offer remedies under certain protected classes and not others, pursuant to the ICRA. This interpretation is wholly inconsistent with the legislative intent of the ICRA, requirement to construe the statute broadly and would likely violate the rights of people within the broader protected classes. Iowa Code § 216.18(2019).

**V. The Court Has Not Interpreted the Iowa Civil Rights Act to Restrict Local Agencies Ability to Confer Original Jurisdiction Upon the District Court.**

The Court has previously reviewed a municipal ordinance which conferred original jurisdiction upon the District Court and did not find that this was an impermissible action due to local jurisdictions ability to confer jurisdiction upon the District Court. The Court has repeatedly reviewed the ICRA's grant of authority for municipalities to create local civil rights commissions and determined that the intent is that they will effectuate the purpose of the ICRA. *Iowa City v. Westinghouse Learning Corp.*, 264 N.W.2d 771, 773 (Iowa 1978). The Court in this case found that the ICRA established a complete and comprehensive

legislative plan for processing complaints concerning discriminatory practices and that the local commission should have implemented a consistent method of processing complaints. *Id.*

The Court in the *Iowa City* case found that the city's municipal ordinance violated the mandate by requiring the District Court to decide whether a discriminatory practice existed. *Id.* The Court states that the scheme was "precisely what the legislature sought to avoid by making the courts open only for review of the commission's prior determination." *Id.* This case was decided prior to the amendment adding the administrative release provisions, however it is instructive in that the Court has clearly decided the procedural requirements that municipal agencies are comply with in order to be consistent with the ICRA. The legislature subsequently created a statutory right to seek court action to pursue a civil rights claim after exhausting administrative remedies required to be included within municipal complainant's have a right to seek court action to pursue their municipal and state civil rights claims.

The Court has stated "any municipal plan *must be faithful to the legislative scheme* adopted by the General Assembly in Chapter 601A", meaning municipal civil rights ordinances are required to offer the same procedural rights and remedies as the ICRA, an administrative release is an available right under the ICRA. *Id. (emphasis added).*

The Court states the “detailed, complete and all-embracing enactment discloses the clear legislative intent to vest in an administrative body the original duty and power to determine the existence of discriminatory practices, removing that function from the courts except for review purposes.” *Id.* It follows that when the legislature decided to add a provision to the ICRA allowing courts the ability to exercise original jurisdiction, local commissions are required to add a provision authorizing the same procedural framework. The Court has clearly interpreted the ICRA to require local commissions to establish the same procedural mechanism as provided within the ICRA. *Id.* Therefore, local commissions are not only allowed to issue an administrative release, a procedural prerequisite to filing in district court, but they are required to issue an administrative release, because doing otherwise would be inconsistent with the ICRA. *Id.*

The Court’s decision in the *Iowa City* case clearly promulgates a requirement that municipal agencies abide by the legislative procedure outlined by the ICRA. *Id.* The legislature has not conveyed any departure from this stance in the 41 years since the *Iowa City* case was decided. *Id.* In *Cedar Rapids*, the Court found the Cedar Rapids ordinance was inconsistent with Ch. 601A (*later renumbered 216*) because it failed to provide for judicial review of the local commission's orders, stating “We are convinced it was the legislative intent that ordinances adopted for the purpose of implementing Ch. 601A must not be

inconsistent.” *Cedar Rapids Human Rights Com. v. Cedar Rapids Cmty. Sch. Dist.*, 222 N.W.2d 391, 402 (Iowa 1974). In addition to the clearly worded requirements found within the ICRA, “All cities shall, to the extent possible, protect the rights of the citizens of this state secured by the ICRA”; the Court has previously decided that this includes the allowing the issuance of an administrative release to exercise the right to pursue an action in District Court, provided that the appropriate administrative remedies are exhausted. Iowa Code § 216.19(1)(2019).

The Scott County District Court’s interpretation in the Petitioner’s case is an even more glaring inconsistency than that identified in *Cedar Rapids*, which provided for judicial, rather than administrative, determination of discrimination. *Cedar Rapids Human Rights Commission v. Cedar Rapids Community School District*, 222 N.W.2d 391, 399 (Iowa 1974). The determination by the Scott County District Court, effectively frustrates the legislative purpose of the ICRA’s requirement that municipalities create local commissions and that the rights under the ICRA be protected under those municipal ordinances. Iowa Code § 216.19(1)(2019). Local commissions are required to have substantially the same clearly established procedure as the ICRA for adjudicating complaints. *Iowa City v. Westinghouse Learning Corp.*, 264 N.W.2d 771, 773 (Iowa 1978) (holding municipal ordinance conflicted with state law and was invalid because it was not “faithful to the legislative scheme”). Similarly, in *Goodell v. Humboldt Cty.*, the

Court found that the ordinance did not simply impose higher standards, something that would have been permissible, but rather it changed the regulatory scheme and was therefore irreconcilable with state law. 575 N.W.2d 486, 503-04 (Iowa 1998). The decision by the district court in this case, would be a significant departure from the regulatory scheme outlined within the ICRA.

#### **VI. The Iowa Civil Rights Act Requires Local Agencies to Allow for an Administrative Release to Pursue A Claim in District Court.**

The intent of the ICRA authorization for local commission's to implement the chapter was clearly to create a consistent framework for adjudicating local civil rights complaints. The Court has found, "A city shall substantially comply with a procedure established by a state law for exercising a city power. If a procedure is not established by state law, a city may determine its own procedure for exercising the power." *Iowa City v. Westinghouse Learning Corp.*, 264 N.W.2d 771, 773 (Iowa 1978). "An exercise of a city power is not inconsistent with the state law unless it is irreconcilable with the state law." *Id.* Municipal civil rights laws that allow for the issuance of a right to sue letters are complying with the requirement of the regulatory scheme promulgated by the ICRA. The Court has found that "quasi-judicial functions may be conferred upon and exercised by an administrative agency, provided the laws conferring such powers are complete in their content; are designed to serve a general public purpose; are such as to require

a consistent and immediate administration; and further provided that all administrative actions are subject to judicial review. *Cedar Rapids Human Rights Com. v. Cedar Rapids Cmty. Sch. Dist.*, 222 N.W.2d 391, 400 (Iowa 1974). The Court in this case found that the ordinance establishing the Commission was inconsistent with the state law because it failed to provide for direct appellate review of findings or rulings whereas chapter 601A(ICRA) did. *Id* at 401. The Court in *Molitor* reviewed the issue presented in *City of Iowa City v. Westinghouse Learning Corporation*, 264 N.W.2d 771 (Iowa 1978) and did not find that local commissions lacked the authority to confer jurisdiction upon the district court. *Molitor v. Cedar Rapids*, 360 N.W.2d 568, 570 (Iowa 1985). The Court found that the ordinance contravened the legislative grant of authority, because it purported to provide for the district court rather than commission to make the initial determination concerning discrimination complaints. *Id*. The ordinance was stricken because it was inconsistent with the statutory grant of authority, not because of a perceived limitation of the local commission to confer jurisdiction on the district court. *Id*.

## **VII. The District Court Interpretation of the Authority of Local Commissions and Irreconcilable with ICRA**

The District Court's finding is inconsistent with the statutory authority granted to local commissions under the ICRA. The ICRA authorizes local

commissions to enact local ordinances to effectuate the rights and remedies authorized under the Act, this includes the issuance of an administrative release to pursue an action in District Court. Under the interpretive provisions of §§ 364.6 and 364.2, "A city shall substantially comply with a procedure established by a state law for exercising a city power. If a procedure is not established by state law, a city may determine its own procedure for exercising the power"; "an exercise of a city power is not inconsistent with the state law unless it is irreconcilable with the state law." *Iowa City v. Westinghouse Learning Corp.*, 264 N.W.2d 771, 773 (Iowa 1978). This last section was construed in *Green v. City of Cascade*, 231 N.W.2d 882, 890 (Iowa 1975), where the Court found: "Irreconcilable means 'impossible to make consistent or harmonious' while inconsistent means 'incongruous, incompatible, irreconcilable.'" *Id.* The Court further said: "The legislature has considerable authority to lay down rules for the interpretation of its own statutes. The legislature appears to say in [364.2(3)] that state laws are to be interpreted in a way to render them harmonious with ordinances unless the court or other body considering two measures cannot reconcile them, in which event the state law prevails." *Id.* The ICRA clearly establishes a procedure for exercising the power granted, and the municipal ordinance followed it. The interpretation proffered by the District Court is so in conflict with the underlying intent and purpose of Chapter 216 that the two are irreconcilable. *Id.*

**A. The Interpretation of a Restriction of Municipal Authority to Issue an Administrative Release to Complainant's Who Have Their Rights Under a Local Ordinance Issued, But Permission for the Protections Available Under the ICRA Raises Equal Protection Concerns.**

The district court's interpretation of the permissible actions under the ICRA would create an equal protection issue under article I, section 6 of the Iowa Constitution, due to the different procedures and remedies provided through the district court in original jurisdiction of a claim compared to judicial review of agency action. *McQuiston v. City of Clinton*, 872 N.W.2d 817, 830 (Iowa 2015). The standards for judicial review differ substantially from those authorized in an original civil rights action. *Id.* "Equal protection demands that laws treat alike all people who are 'similarly situated with respect to the legitimate purposes of the law.'" *Id.* citing *Varnum v. Brien*, 763 N.W.2d 862, 882 (Iowa 2009) (quoting *Racing Ass'n of Cent. Iowa v. Fitzgerald*, 675 N.W.2d 1, 7 (Iowa 2004) [hereinafter *RACI*]). Interpreting the ICRA to restrict persons filing through a local commission to appellate jurisdiction significantly alters their legal position.

In judicial review of agency action under section 17A.19, the district court generally acts in an appellate capacity as opposed to the original fact-finding mission present in adjudicating a civil rights complaint where a right to sue has

been issued. *Hollinrake v. Monroe Cty.*, 433 N.W.2d 696, 697-98 (Iowa 1988).

The equal protection claim arises, because certain protected classes would receive disparate treatment as it pertains to rights granted by and through the ICRA without any valid policy reasons. *McQuiston* 872 N.W.2d at 830 (Iowa 2015).

**VIII. The Legislature Has Recognized that a Final Action of a Local Commission Should be Viewed the Same as a Final Action from the ICRC.**

The legislature has directed that final decisions of municipal civil rights commissions shall be reviewable to the same extent as final decisions of the ICRC. *Simon Seeding & Sod, Inc. v. Dubuque Human Rights Comm'n*, 895 N.W.2d 446, 455 (Iowa 2017) *citing* Iowa Code § 216.19 (2019). The court may grant "relief from agency action if it determines that substantial rights of the person seeking judicial relief have been prejudiced because the agency action was taken without following the prescribed procedure or decision-making process." *Klein v. Dubuque Human Rights Comm'n*, 829 N.W.2d 190 (Iowa Ct. App. 2013) *citing* Iowa Code § 17A.19(10). The Court reviews decisions of the ICRC and municipal civil rights agencies according to the standards delineated in Iowa's Administrative Procedure Act, set forth in chapter 17A of the Iowa Code. *Id.* § 216.17; *see Botsko v. Davenport Civil Rights Comm'n*, 774 N.W.2d 841, 844 (Iowa 2009). The Court has long held that an administrative closure issued by a municipal civil rights

commissions, a final agency action, is reviewable in the same extent as a final decision of the ICRC. *Id.*

**IX. The ICRA Does Not Require Local Commissions to Hold a Public Hearing on all Claims Not Protected Under the Act.**

Complainants are entitled to an opportunity to pursue their action in the District Court after receiving the administrative release from the Commission. The Petitioner does not have a right to an administrative hearing before the Commission, requiring this would create an undue administrative and financial burden on local commissions. To have a right or a property interest in a benefit, a person must have more than a unilateral expectation to it and instead, must have a legitimate claim of entitlement to it. *Estabrook v. Iowa Civil Rights Com.*, 283 N.W.2d 306, 309-11 (Iowa 1979). Pursuant to the DCRO and ICRA, the Petitioner has a property interest in “the form of his right not to be discriminated against because of his age -- a right foundationed by federal and state enactments”. *Id.* The property interests referenced are created by and their dimensions are defined by, existing rules or understandings that stem from a “state law -- rules or understandings that secure certain benefits and that support claims of entitlement to those benefits”. *Id.* The Commission’s action in administratively closing the case, was simply an exhaustion of his state administrative remedy, a prerequisite to pursuing a civil rights action in District Court. *Id. citing City of Iowa City v.*

*Westinghouse Learning Corp.*, 264 N.W.2d 771 (Iowa 1978); 29 U.S.C. § 633. The Court has found that after exhaustion of the available administrative remedies, the Petitioner can “file a civil action in either state or federal court to enforce his extensive rights under the federal enactment”. *Id.* 29 U.S.C. § 626(c); *Jacobi v. High Point Label, Inc.*, 442 F. Supp. 518 (M.D.N.C. 1977); *see Johnson v. Butler Brothers*, 162 F.2d 87, 88 (8th Cir. 1947). Foreclosing on this right is an impermissible interpretation of the ICRA.

**X. The Legislature Intended to Allow the Commission to Utilize Discretion in Determining Which Cases to take to Public Hearing.**

The Commission administratively closed the Petitioner’s case, due its decision that the case limited resources to take the case to public hearing, prior to a contested case proceeding. Because this case, as stated above, does not involve a contested case, but rather other agency action, the Petitioner was not entitled to an opportunity for an evidentiary hearing prior to the agency action. “Contested case” means a proceeding including but not restricted to ratemaking, price fixing, and licensing in which the legal rights, duties or privileges of a party are required by Constitution or statute to be determined by an agency after an opportunity for an evidentiary hearing. Iowa Code § 17A.2(5) (2019). The Commission likewise lacks authority to take further action on a complaint after an administrative release has been issued. Dav. Mun. Ord. § 2.58.090(D)(2019). The complainant is

however entitled to pursue an action in District Court, after exhausting his administrative remedies and judicial review of final agency action. "[F]inal decisions of municipal civil rights commissions [are] reviewable to the same extent as final decisions of the Iowa Civil Rights Commission (ICRC)." *Palmer Coll. of Chiropractic v. Davenport Civil Rights Comm'n*, 850 N.W.2d 326, 332 (Iowa 2014). Iowa Code section 17A.19(10) controls judicial review of an ICRC decision. *Renda v. Iowa Civil Rights Comm'n*, 784 N.W.2d 8, 10 (Iowa 2010). This grant of jurisdiction to the district court to review a municipal agency decision further supports the grant of jurisdiction for an administrative release.

### **CONCLUSION**

For the reasons provided herein, this Court should find that the Iowa Legislature has conferred subject matter jurisdiction to the district court on civil rights cases, and reverse the district court.

Respectfully Submitted,

/s/ Latrice L. Lacey

**Latrice L. Lacey**  
On Behalf of Iowa League of Civil and  
Human Rights Agencies  
226 West 4<sup>th</sup> Street  
Davenport, IA 52801  
Ph. (563) 326-7888  
Fax (563) 326-7959  
[llacey@ci.davenport.ia.us](mailto:llacey@ci.davenport.ia.us)

**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:

[ X ] this brief has been prepared in a proportionally-spaced typeface using Times New Roman in 14-point font and contains 6,931 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1) or

[ ] this brief has been prepared in a monospaced typeface using Times New Roman in 14-point font and contains XXX lines of text, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(2).

/s/Latrice Lacey

May 3, 2019

**Signature**

**Date**