

7. The primary issues in this judicial review proceeding are procedural; they focus on whether Miller was entitled to an evidentiary hearing on his complaint, and whether the VRC committed legal error in granting the Secretary of State's motion to dismiss. The only relief Miller seeks is remand to the VRC with instructions to schedule a contested case hearing. (Miller Br. at 12; Miller Reply Br. at 10.)

8. Miller and the VRC both submitted judicial review briefs, and the Court held a hearing on July 10, 2020.

9. However, *even if* the Court orders a hearing to take place before the VRC, it is impossible for the VRC, or anyone else, to both find a violation of HAVA and award remedial relief in time for the 2020 general election. *See Davis v. Best*, 2 Iowa 96, 98 (1855) (“The . . . election is established by law, and the time it is held should be judicially taken notice of.”).

10. Accordingly, this case is moot. It “no longer presents a justiciable controversy because the issues involved have become academic or nonexistent.” *Martin-Trigona v. Baxter*, 435 N.W.2d 744, 745 (Iowa 1989).

11. “More than once,” the Iowa Supreme Court “has been faced with a situation in which the passage of time made any remedy impossible.” *Nitta v. Kuda*, 249 Iowa 853, 857, 89 N.W.2d 149, 151 (1958). Another instance has occurred here. Even if Miller obtains an evidentiary hearing before the VRC, the relief he wants—a directive ordering the Secretary of State to institute additional safeguards for Iowa's voting and election systems before the 2020 general election—is impossible to provide. *Cf. Baker v. City of Iowa City*, 750 N.W.2d 93, 98 (Iowa 2008) (“The potential relief—annulling the proceedings below and prescribing the manner in which to proceed further—could have no practical effect because the proceeding that would be impacted by any such relief is no longer pending.”); *Fed. Land Bank v. Heeren*, 398 N.W.2d 839,

844 (Iowa 1987) (“[T]he 1986 crop year has passed and the remedy Heerens seek is now moot.”); *Gere v. Council Bluffs Cmty. Sch. Dist.*, 334 N.W.2d 307, 309 (Iowa 1983) (concluding specific issues were moot because “the 1981–1982 school year has passed”); *Relph v. Goltry*, 240 N.W. 646, 648 (Iowa 1932) (“The planting and gathering of 1931 have become a thing of the past. . . . To that extent the case is moot, and we will not now undertake to collect the water that has passed over the dam.”).

12. Two election-related cases further confirm that this case is now moot. First, in *Martin-Trigona*, a candidate for office contended that a political party’s caucus procedures in 1988 “violated various state and federal statutory and constitutional provisions.” *Martin-Trigona*, 435 N.W.2d at 745. After the caucus occurred, however, the case was moot “because nothing [the court] could do now would affect the 1988 caucuses.” *Id.* Second, almost a hundred years ago, the Iowa Supreme Court concluded a certified election, which was finalized after the district court ruled but before the appellate court ruled, mooted litigation surrounding the election:

[S]ubsequently to the ruling and judgment of the trial court, the certificate of election in question was issued . . . by the defendant Iowa state board of canvassers, and . . . the [candidate] duly qualified as a member of Congress from the Second congressional district of Iowa, and occupied his seat in Congress. . . . There is nothing that the trial court or this court can now do in the premises that would be effectual to change the status of the situation. The very essence of the case in the court below has vanished, and no act of this court, under the circumstances would avail anything to create a rehabilitation of plaintiff’s cause of action.

Richman v. Letts, 210 N.W. 93, 94 (Iowa 1926).

13. Just as in *Richman*, the election is now over. There is nothing the Court can do “that would be effectual to change the status of the situation.” *Id.* No act of this Court or of the VRC could afford Miller the relief he sought to have instituted before the 2020 general election—even if he received the evidentiary hearing he asks this Court to order. Accordingly, this case is moot and must be dismissed.

WHEREFORE, the Iowa Voter Registration Commission respectfully requests that the Court dismiss this case as moot and award any other relief appropriate under the circumstances.

Respectfully submitted,

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