

**IN THE IOWA DISTRICT COURT FOR POLK COUNTY**

<p><b>LINN COUNTY AUDITOR JOEL MILLER,</b></p> <p><b>Petitioner,</b></p> <p>v.</p> <p><b>IOWA VOTER REGISTRATION COMMISSION,</b></p> <p><b>Respondent.</b></p>	<p><b>CASE NO. CVCV059748</b></p> <p><b>PETITIONER’S RESISTANCE TO RESPONDENT’S MOTION TO DISMISS AS MOOT</b></p>
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**COMES NOW**, Petitioner Linn County Auditor Joel Miller, and for his Resistance to Respondent Iowa Voter Registration Commission’s Motion to Dismiss as Moot, hereby states the following:

1. In this judicial review proceeding, Petitioner Linn County Auditor Joel Miller asserts that the Iowa Voter Registration Commission (“VRC”) violated federal law, state statute and its own administrative rules, thus committing legal error, and acted in an unreasonable, arbitrary and capricious manner, when it denied Petitioner a hearing on the merits of his Complaint. (Petitioner’s Brief on Judicial Review, pp. 8-12.)
2. The Petition for Judicial Review was filed on February 13, 2020, 3 months and 20 days before the scheduled primary election, held on June 2, 2021.
3. Hearing on the Petition was not convened by the District Court, however, until after the primary election, on July 10, 2020.
4. In the six months between the date of the hearing and the date of the filing of the Motion to Dismiss, no Order was issued on the question as to whether, as directed by federal and state statutes and by administrative rules published by the Iowa Secretary of State, a

hearing must be convened to hear the issues raised by Petitioner Joel Miller, in his official capacity as Auditor of Linn County, Iowa.

5. The general election was held on November 3, 2020.
6. As VRC notes in its Motion to Dismiss, the primary issues in this judicial review proceeding are procedural: whether Petitioner Miller was entitled to a hearing on the merits of his complaint, and whether the VRC erred in granting the Secretary of State's pre-hearing motion to dismiss.
7. The VRC goes on, however, to argue that because Petitioner Miller's complaint raised concerns about the 2020 election, and because that election is now over, this case is moot and must be dismissed.
8. Respondent's motion focuses on the substance of the Auditor Miller's complaint, ignoring the underlying procedural issue raised in Auditor Miller's Petition for Judicial Review: whether the VRC was required, pursuant to federal and state law, to convene a hearing to consider the merits of the complaint.
9. The procedural issue raised by Auditor Miller falls within an exception to the mootness rule. "[C]laims should not be dismissed on mootness grounds where matters of public importance are presented and the problem is likely to recur." *Iowa Freedom of Info.*

*Council v. Wifvat*, 328 N.W.2d 920, 922 (Iowa 1983). As the Iowa Supreme Court noted in *Wifvat*:

The United States Supreme Court has found cases of this type not moot where (1) the challenged action was in its duration too short to be fully appealed prior to its cessation or expiration and (2) a reasonable expectation existed that the same complaining party would be subjected to a similar action. *Gannett Co., Inc. v. DePasquale*, 443 U.S. 368, 377, 99 S. Ct. 2898, 2904, 61 L. Ed. 2d 608, 620 (1979) (challenge to lower court order closing a pretrial hearing when trial itself was over); *Southern Pacific Terminal Co. v. ICC*, 219 U.S. 498, 515, 31 S. Ct. 279, 283, 55 L. Ed. 310, 316 (1911) ("capable of repetition, yet evading

review"). *See also Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 563, 100 S. Ct. 2814, 2820, 65 L. Ed. 2d 973, 981 (1980) [\*\*6] ("It is reasonably foreseeable that other trials may be closed by other judges. . .").

*Id.* at 922.

10. Whether the VRC violated federal law and its own administrative rules by failing to hold an evidentiary hearing is a matter of public importance. Administrative bodies should be held accountable for following the procedures established by law, and citizens should be able to rely on those procedures when seeking redress before those bodies.
11. The problem is likely to reoccur. If Auditor Miller's petition is dismissed, he could file another complaint with the VRC, raising issues related to the 2020 election. *See* 52 USC § 21112(a)(2)(B)(allowing any person who believes a violation of HAVA "has occurred, is occurring, or is about to occur in connection with a federal election" to file a complaint)(emphasis added); *see also* Iowa Admin. Code r. 721—25.1(1). Therefore, in the interest of judicial economy, the district court should address the merits of Auditor Miller's petition for judicial review now.
12. Moreover, VRC's motion to dismiss ignores the plain language of HAVA, which allows any person who believes a violation of HAVA "has occurred, is occurring, or is about to occur in connection with a federal election" to file a complaint. 52 USC § 21112(a)(2)(B)(emphasis added); *see also* Iowa Admin. Code r. 721—25.1(1). VRC's present motion makes a mockery of that express language.
13. Because HAVA allows complaints for violations in the past ("has occurred") the VRC retains jurisdiction to consider Auditor Miller's arguments and examine whether any HAVA violations occurred in conjunction with the 2020 election.

**WHEREFORE**, Petitioner Auditor Joel Miller respectfully requests that the Court deny Respondent's Motion to Dismiss as Moot and decide the case on the merits.

Respectfully submitted,

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**PROOF OF SERVICE**

The undersigned certifies that the foregoing document was served upon all parties to each of the attorneys of record herein at their respective addresses disclosed on the pleadings on February 16, 2021.

By:

- Hand Delivered
- US Mail
- Fax
- Email
- Other – CM/ECF

Signature \_\_\_\_\_ /s/Andrew Kramer