IN THE IOWA DISTRICT COURT FOR POLK COUNTY

SAVE OUR STADIUMS, DANIEL PARDOCK, TAMARA ROOD, DANIEL TWELMEYER, and **KATIE PILCHER**, Plaintiffs, vs. **DES MOINES INDEPENDENT COMMUNITY SCHOOL DISTRICT, KYRSTIN DELAGARDELLE, HEATHER ANDERSON, ROB BARRON, DWANA BRADLEY, TEREE CALDWELL-JOHNSON, KALYN CODY,** and **KELLI SOYER**, Defendants.	**Case No. CVCV060495** **RULING ON PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT AND DEFENDANTS' COUNTER-MOTION FOR SUMMARY JUDGMENT**

INTRODUCTION

Plaintiffs filed a Motion for Summary Judgment on on March 22, 2021. Defendants filed a Resistance and a Counter-Motion for Summary Judgment on April 6, 2021. The Court held a hearing on May 7, 2021. Gary Dickey represented Plaintiffs. Blake Hanson and Janice Thomas represented Defendants.

FACTUAL BACKGROUND

On November 12, 2019, the Des Moines Independent Community School District (hereinafter, "the District") and Drake University announced plans to develop an outdoor athletic stadium on Drake's campus. Defs.' Ex. B. The project would be funded in part by $15 million in sales tax revenue. *Id*. Drake would raise the additional $4.5 million. *Id.*; Defs.' Br. p. 5; Pls.' Br. p. 2. During a May 19, 2020 meeting and public hearing, the Des Moines Public Schools Board of Directors (hereinafter, "the Board") voted unanimously in favor of the resolution proposing to use

$15 million of the Secure an Advanced Vision for Education ("SAVE") revenue to construct the stadium. Defs.' Ex. C, pp. 1–2.

The resolution included language providing eligible electors with the right to file a petition requesting a special election on this use of the SAVE revenue for building the new stadium:

> Eligible electors of the school district have the right to file with the Board Secretary a petition pursuant to Iowa Code § 423F.4(2)(b), on or before close of business on June 2, 2020, for an election on the proposed use of SAVE Revenue. The petition must be signed by eligible electors equal in number to not less than one hundred or thirty percent of those voting at the last preceding election of school officials under Iowa Code § 277.1, whichever is greater.

Defs.' Ex. D p. 1.

On June 2, 2020, Plaintiffs Save Our Stadiums (SOS) and Daniel Pardock submitted a petition to District Board Support staff member Erin Jenkins requesting a special election on the resolution. Pet. ¶ 32; Defs.' Br. p. 6. Pardock states that he handed the petition to Jenkins at approximately 4:30 PM. Pls.' App. p. 130 (Dep. of Pardock pp. 33:15–25, 34:1–2). On June 5, Jenkins and Shashank Aurora, the District's Chief Financial Officer and Board Secretary, began to review the petition. Defs.' Br. p. 6; Pet. ¶ 33; Defs.' Ex. K, p. 6 (Dep. of Aurora, p. 27:5–19). Plaintiffs allege the petition contained 7,120 signatures from eligible electors. Defendants assert that, in an initial review of the petition, Aurora and Jenkins counted 7,047 valid signatures. Pet. ¶ 32; Defs.' Br. pp. 6, 9; Defs.' Ex. K, p. 4 (Dep. of Aurora, p. 13:1–7).[1]

Based on their understanding that the petition required 7,501 signatures to be valid on its face, Aurora and Jenkins concluded that the number of signatures on the petition was well below the requirement and the petition was thus not valid. Defs.' Ex. K, p. 4 (Dep. of Aurora, p. 13:11–

[1] Defendants note this discrepancy in their brief, but assert that "[e]ven . . . assuming the petition contained 7,120 valid signatures as [Plaintiffs] allege, this number still falls 382 signatures short of the number required by Iowa law . . . ." Defs.' Br. p. 9 (emphasis omitted).

16). Therefore, Defendants assert that the District did not accept the petition for filing. Defs.' Statement of Undisputed Facts ¶ 32 (citing Defs.' Ex. K, p. 4 (Dep. of Aurora, p. 14:7–16; p. 15:2–7)). Aurora informed Superintendent Thomas Ahart of the signature count and the petition's therefore deficient status. The District then considered the petition issue concluded and did not file any written objections to the petition. According to Plaintiffs, the District never returned the petition, informed Pardock that the number of signatures was insufficient, or provided any other kind of follow-up.

This lawsuit was filed on July 28, 2020. The Plaintiffs include SOS, which is an unincorporated nonprofit association comprised of eligible electors residing in the District. Pet. p. 2. The four individual Plaintiffs are residents and eligible electors in the District. *Id*. Besides the District, Plaintiffs named the seven members of the Board of Directors of the District as Defendants. Plaintiffs request a declaratory judgment finding that Plaintiffs filed a valid petition, Defendants did not follow the procedural requirements of Iowa Code § 277.7, and Defendants' failure to call a special election violated Iowa Code § 423F.4(2)(b) and the Due Process Clause of the Fourteenth Amendment. Pet. pp. 10–11. The Petition also requested a writ of mandamus and an injunction. Pet. p. 11.

Additional facts are set forth in the context of the legal arguments.

LEGAL STANDARD

A court shall grant a motion for summary judgment "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Iowa R. Civ. P. 1.981(3); *Gries v. Ames Ecumenical Hous., Inc.*, 944 N.W.2d 626, 627 (Iowa 2020). "The summary judgment procedure seeks to expedite litigation when there is no

factual issue and to forestall delaying tactics when defendant has no meritorious defense." *Nagle Lumber Co. v. Better Built Homes*, 160 N.W.2d 446, 447 (Iowa 1968). A question of fact arises "if reasonable minds can differ on how the issue should be resolved." *Walderbach v. Archdiocese of Dubuque, Inc.*, 730 N.W.2d 198, 199 (Iowa 2007) (quoting *Walker v. Gribble*, 689 N.W.2d 104, 108 (Iowa 2004)). However, there is no factual issue if the only conflict concerns legal consequences flowing from undisputed facts. *Grinnell Mut. Reinsurance Co. v. Jungling*, 654 N.W.2d 530, 535 (Iowa 2002).

ANALYSIS

In ruling on the present motions for summary judgment, the Court analyzes the following issues: (1) whether the District followed the proper statutory procedures for accepting or rejecting the Plaintiffs' petition; (2) whether the District correctly determined the number of signatures required to trigger the referendum vote; and (3) whether the District's failure to call a referendum vote violated Plaintiffs' due process rights.

A. Whether the District Followed Iowa Code § 277.7's Procedural Requirements

Iowa Code § 277.7 outlines the process for petitions received by a school board regarding public measures:

> 1. A petition filed with the school board to request an election on a public measure shall be examined before it is accepted for filing. If the petition appears valid on its face it shall be accepted for filing. If it lacks the required number of signatures it shall be returned to the petitioners.
>
> 2. Petitions which have been accepted for filing are valid unless written objections are filed. Objections must be filed with the secretary of the school board within five working days after the petition was filed. The objection process in section 277.5 shall be followed for objections filed pursuant to this section.

Iowa Code § 277.7. The parties do not dispute that an election regarding the use of SAVE revenue is a "public measure." *See* Iowa Admin. Code § 721-21.803 (providing election forms used for

ballots to adopt, amend, or extend the revenue purpose statement specifying the uses of SAVE funds and which refer to such an issue as a public measure).

Plaintiffs assert that the District failed to follow statutory requirements when it did not return the petition to Pardock before accepting it for filing and because it never informed Pardock that the petition lacked the required number of signatures. Pls.' Br. p. 10; Pls.' App. p. 51 (Dep. of Aurora, p. 30:10); Pls.' App. p. 131 (Dep. of Pardock, p. 34:21–22). Additionally, Plaintiffs argue that Defendants did not file an objection to the petition pursuant to §§ 277.5 and 277.7. Pls.' Br. p. 10; Pls.' App. p. 11, ¶ 35. Defendants, argue that the District never accepted it for filing because the petition was deemed facially invalid as it did not contain enough signatures. Defs.' Br. p. 20. The argument follows that, because the District never accepted the petition for filing, it was not required under § 277.7 to file an objection.

"The interpretation of a statute is a question of law for the Court to decide." *Ferezy v. Wells Fargo Bank, N.A.*, 755 F.Supp.2d 1010, 1013 (S.D. Iowa 2010) (citing *Clay Cnty. v. Pub. Emp. Rels. Bd.*, 784 N.W.2d 1, 4 (Iowa 2010)). *See also Concerned Citizens of Se. Polk Sch. Dist. v. City of Pleasant Hill*, 878 N.W.2d 252, 258 (Iowa 2016) ("Issues of statutory construction are legal questions and 'are properly resolvable by summary judgment.'" (quoting *Knudson v. City of Decorah*, 622 N.W.2d 42, 48 (Iowa 2000))). "Summary judgment is an appropriate remedy when questions of statutory interpretation are controlling." *Id.* (citations omitted).

In interpreting a statute, the Court "attempt[s] to give effect to the general assembly's intent in enacting the law. Generally, this intent is gleaned from the language of the statute." *Griffin Pipe Prods. Co. v. Guarino*, 663 N.W.2d 862, 864–65 (Iowa 2003) (internal citations omitted). The court does "not search for meaning beyond the express terms of a statute when the statute is plain and its meaning is clear." *State v. Albrecht*, 657 N.W.2d 474, 479 (Iowa 2003). Therefore, the

court will "resort to rules of statutory construction only when the explicit terms of a statute are ambiguous." *Id.*

Iowa courts have determined that "[i]n a statute, the word 'shall' generally connotes a mandatory duty." *In re Detention of Fowler*, 784 N.W.2d 184, 187 (Iowa 2010) (citation omitted). The Iowa legislature has also explicitly stated that "[u]nless otherwise specifically provided by the general assembly . . . [t]he word 'shall' imposes a duty." Iowa Code § 4.1(30)(a). The three sentences of § 277.7(1) all use the word "shall" in providing procedural directions for school boards that receive petitions for public measures.

The statute at issue first states that "[a] petition filed with the school board to request an election on a public measure *shall* be examined before it is accepted for filing." Iowa Code § 277.7(1) (emphasis added). The statute next provides two conditional statements: "If the petition appears valid on its face it *shall* be accepted for filing. If it lacks the required number of signatures it *shall* be returned to the petitioners." *Id.* (emphases added). The construction of these sentences indicates that if the first half of each sentence is true, then the school board must follow the action provided in the second half of the corresponding sentence.

However, the rules of statutory construction also require the courts to "look at statutes as a whole . . . 'rather than looking at words and phrases in isolation.'" *State v. Iowa Dist. Ct. for Scott Cnty.*, 889 N.W.2d 467 (Iowa 2017) (alterations made to original structure) (quoting *Iowa Ins. Inst. v. Core Grp. of Iowa Ass'n for Just.*, 867 N.W.2d 58, 72 (Iowa 2015)). Courts "strive to interpret each provision of a statute 'in a manner consistent with the statute as an integrated whole.'" *Nash Finch Co. v. City Council of City of Cedar Rapids*, 672 N.W.2d 822, 826 (Iowa 2003) (quoting *Griffin Pipe Prods., Co.*, 663 N.W.2d at 864). Therefore, the Court considers how all sentences in the statute work when read together.

Pursuant to the first sentence of section 277.7, when a District receives a petition, it is required to examine it before accepting it for filing. If that examination reveals that the petition is valid on its face, then pursuant to the second sentence, the board has no choice but to accept it for filing. If, however, the examination reveals that the petition lacks the required number of signatures and is therefore *not valid* on its face, then pursuant to the third sentence, the board is obligated to return it to the petitioners. There is nothing in the statute to suggest that a third option exists, namely, that the board may refuse to accept a petition for filing and decline to contact the petitioner. However, this is the option that the District argues it properly exercised:

> Upon receipt of Plaintiffs' Petition, Chief Financial Officer Shashank Aurora performed a facial review of the Petition, simply seeking to ascertain the total number of signatures it contained. SUMF ¶ 29. The initial count showed Petitioners fell well below the required number under Iowa law, making it facially invalid and insufficient to force a referendum on the resolution, thus [the Board] never accepted it for filing. SUMF ¶¶ 30–32.

Defs.' Br. p. 20. *See also* Defs.' Reply Br. p. 9 ("There was never any determination that the petition was facially valid. As a result, the petition was not accepted for filing.").

The explicit terms of section 277.7(1) are unambiguous. The District correctly took time to examine the petition. It determined that the petition was not valid. Accepting as true the District's position regarding the number of signatures needed, the District correctly denied acceptance of the petition as invalid on its face. However, under the statute, it was then required to return the petition to Pardock. It did not do so as required by the terms of the statute. Accordingly, the District failed to comply with the statute.

The question then becomes one of remedy. Section § 277.7 does not contain any language stating that the remedy for failing to return a petition that lacks the minimum number of signatures is to consider the petition valid and accepted by the District. Plaintiffs point to subsection 2, which states that "[p]etitions which have been accepted for filing are valid unless written objections are

filed." Iowa Code § 277.7(2). That subsection then sets a timeline for filing objections and refers back to section 277.5 regarding the process to be followed for resolving objection.

The problem with this argument is that the objection process is intended to allow third-parties an opportunity to challenge a petition, not a school district. *See e.g. Berent v. City of Iowa City*, 738 N.W.2d 193, 198 (Iowa 2007) (city clerk found the petitions to be valid on their face and accepted them for filing; seven individuals and a voting group filed timely objections); Iowa Code § 277.5(1) (allowing "any person who would have the right to vote" the option to file an objection to a nomination petition). The District's role is to review a petition to determine compliance on the front end of the process, which primarily involves a review of the number of signatures. If the petition does not meet the legal requirements, the school district can simply deny acceptance of the petition – there is no need to accept it and file an objection. The objection process allows outside individuals or entities an opportunity to challenge the number of signatures or other procedural deficiencies after the petition is accepted by the district. The objection provision does not require the District to automatically accept a petition and then file an objection to it.

The case law does not support a judicial-enforced acceptance of the petition based on a technical violation of the statute. For example, in *State ex. rel. Schilling v. Comm. School Dist. of Jefferson*, the court considered alleged irregularities in the formation of a school district. 106 N.W.2d 80, 83 (Iowa 1960). The court held that the district substantially complied with the statute even though an administrative official made a procedural mistake. *Id*. at 83-84. A challenger could only defeat the action if the person was misled, or upon a showing of prejudice. *Id*.

Defendants argue that Plaintiffs were not misled and cannot show prejudice. Superintendent Thomas Ahart informed Pardock of the number of signatures required, so Pardock knew that the petition fell short of the required number at the time of filing. As a result, Pardock

was not misled as to the number of signatures needed. Second, Defendants assert that even if the District had returned the petition to Pardock after its opportunity for review, the petition could not have been cured before the statutory deadline. Pardock submitted the petition on June 2, 2020 at approximately 4:30 PM, which was the last day of the submission period. Pls.' App. pp. 125–26 (Dep. of Pardock, pp. 28:16–25, 29:1–3); Pls.' App. p. 130 (Dep. of Pardock p. 33:15–18). The office closed at 5:00 and the District did not review them until after the deadline passed. Accordingly, even accounting for a cursory review of the number of signatures, there could not have been time to conduct the review, return the petition to Plaintiffs, allow them time to acquire the additional needed signatures, and refile the petition within the 30 minute period before the office closed.

Defendants cite to a still-valid case from the distant past to support its view. In *Crawford v. School Tp. of Beaver*, the plaintiffs challenged the legality of a school district's actions in failing to comply with notice dates set forth by statute. 166 N.W. 702, 705 (Iowa 1918). The language is over one hundred years old, but it still holds up well:

> The courts are, and ought to be, slow to interfere with the conduct of public business by public officers, and this is especially true of public business committed to the administration of officers or boards not learned in the law and unaccustomed to the observation of strict legal formalities. If they manifest good faith and show substantial compliance with the law prescribing their duties, their acts should be sustained against the hostile attack grounded on technical defects and omissions occasioning no prejudice to public interests.

In the present case, the District committed a technical violation of the statute by failing to return the petition to Plaintiffs. Under some potential fact scenarios, that failure could be a substantive violation. For example, if the petitioner had time to correct the deficiency before the deadline, or if the governmental body had misled the petitioner regarding the number of signatures needed, the failure to return the petition would be substantive because the petitioner could show

prejudice.[2] In this case, neither are true. The District did not mislead Plaintiffs as to the number of signatures needed. There was no possibility Plaintiffs could have made up the difference in the number of signatures needed if the District had returned the petition. The court concludes that the District's failure to return the petition amounted to a procedural mistake and did not result in a substantial violation of the statute. Therefore, the petition is deemed not accepted by the District.

B. Whether the District Correctly Determined the Required Number of Signatures

The second point of disagreement is whether the District correctly determined the number of signatures needed for it to accept the petition. To be accepted, "[t]he petition must be signed by eligible electors equal in number to not less than one hundred or thirty percent of the number of voters at the last preceding election of school officials under section 277.1, whichever is greater." Iowa Code § 423F.4(2)(b).[3]

For the purposes of chapter 423F, section 277.1 explains what constitutes the "last preceding election of school officials":

> The regular election shall be held biennially on the first Tuesday after the first Monday in November of each odd-numbered year in each school district for the election of officers of the district and merged area and for the purpose of submitting to the voters any matter authorized by law.

Iowa Code § 277.1. The parties agree that the relevant election for purposes of this case is the election held on November 5, 2019. Defs.' Br. p. 9; Pls.' Br. p. 8. *See also* Pls.' App. p. 11, ¶ 36 (demonstrating Defendants admitted the statement in Plaintiffs' Petition that "the 'last preceding election of school officials under Iowa Code § 277.1' occurred on November 5, 2019").

Plaintiffs assert that the required number of signatures is calculated from "the number of people who cast votes in the at-large board director's race . . . ." Pls.' Br. p. 5. In other words,

[2] In essence, this sounds like a procedural due process standard, although not characterized that way in the case law.
[3] Iowa Code § 423F.3(7)(a) also contains the same language enumerating this requirement.

according to Plaintiffs, § 423F.4(2)(b)'s language "the number of voters at the last preceding election of school officials" refers to the number of people who actually marked their ballots for candidates for school board directors. *Id.* at p. 7. A total of 17,843 District residents voted in the at-large race at that election. Def. Ex. M, p. 1. Under Plaintiffs' theory, the required number of signatures is 5,353. Pet. ¶ 40.

By contrast, Defendants argue that the required number of signatures should be calculated from the total number of voters in the last election, regardless of whether a voter marked the ballot for any specific measure, race, or candidate. Defs.' Br. p. 10. A total of 25,009 District residents voted in the election. Obviously, not all voted on the race for the at-large seat. Under Defendants' theory, the required number of signatures is 7,502, so the 7,120 signatures included in Plaintiffs' petition fell short. Defs.' Br. p. 11. Once again, the controlling issue here is a question of statutory interpretation, one that "concerns legal consequences flowing from undisputed facts" and is therefore properly resolved on summary judgment. *Grinnell Mut. Reinsurance Co.*, 654 N.W.2d at 535.

"A statute is ambiguous if reasonable minds could differ or be uncertain as to the meaning of the statute." *Albrecht*, 657 N.W.2d at 479 (citations omitted). In other words, if the court concludes that neither suggested interpretation of a statute is unreasonable, then the statute is ambiguous. *Nash Finch Co.*, 672 N.W.2d at 827. Both Plaintiffs and Defendants argue that § 423F.4(2)(b) is unambiguous, yet each has their own interpretation, as mentioned above. Pls.' Br. p. 7; Defs.' Br. p. 14. As neither party's suggested interpretation is unreasonable, the analysis continues.

"When a statute is ambiguous, the court may consider, among other factors, the purpose of the statute, the consequences of a particular construction, and any administrative interpretation of

the statute." *Nash*, 672 N.W.2d at 827. *See* Iowa Code § 4.6 (providing a list of factors that the court may consider in determining the intention of the legislature when a statute is ambiguous). The Iowa Supreme Court has also found "the legislative history of a statute is instructive of intent." *Sanon*, 865 N.W.2d at 511 (citing *State v. Dohlman*, 725 N.W.2d 428, 431 (Iowa 2006)). Additionally, an important "rule of statutory construction is the presumption that '[a] just and reasonable result is intended.'" *Doe*, 903 N.W.2d at 353 (quoting Iowa Code § 4.4(3)). Generally, Iowa courts recognize that practicality is important and thus "try to interpret statutes so they are reasonable and workable." *State v. Iowa Dist. Ct.*, 889 N.W.2d 467, 473 (Iowa 2017).

Because section 453F.4(2)(b) refers back to section 277.1, a recent change to section 277.1 appears relevant to show legislative intent. In 2017, the Iowa legislature amended section 277.1 to move the school elections from the second Tuesday in September to the first Tuesday after the first Monday in November. 2017 Iowa Acts ch. 155, §§ 8-10. This change went into effect on July 1, 2019. *Id*. Before the change, school board elections were stand-alone elections as they were not held with any other races. Following the amendment, school board elections were held with city races. The intent behind the amendment appears clear: holding school board elections at the same time as city elections saves the expense of holding two separate elections. *See* 2017 Iowa Acts ch. 155, Title Summary (summarizing the act as "providing for the combined administration or regular and special school and city elections").

Section 423F.4(2)(b) was enacted in 2019 after the change to school elections was made. *See* 2019 Iowa Acts ch. 166, § 17. Prior to the amendment in section 277.1, the reference to "number of voters at the last preceding election of school officials under section 277.1" would be clear because no other races or issues were considered in a school district elections. However, the legislature knew that school board elections had been combined with city elections at the time it

passed section 423F.4(2)(b). As a result, the legislature knew that the number of voters at the combined election might include people who vote on city races and issues but not school district races and issues.

The legislature made other changes in the 2017 act to show it intended to create a singled combined election. For example, the legislature amended Iowa Code section 49.41 to allow a person to run for a city office and a school board office "in the same election." 2017 Iowa Acts ch. 155, § 23. This use of language shows that the legislature viewed city and school board elections as a combined election.

The results from the 2019 election show the practical problems with Plaintiffs' argument. Plaintiffs' argument appears logical on the surface. They argue that the number of voters for school officials (as separated from the public measure) is reflected by the votes cast in the at-large race. That initially seems to make sense because all eligible voters in the District can vote on that race. However, some board members are elected by district. Voters may have voted on their district race without voting for the at-large candidate. This is particularly true because the at-large race was uncontested, and one of the district races was contested. Def. Ex. E, p. 7. The votes cast in the contested district race vastly exceed the number of votes in the uncontested district races, thus showing how voters sometimes ignore uncontested races. *Id*. That clearly happened here. The 2019 ballot for District voters also included a public measure. A total of 23,154 people voted on the public measure. This means that 5,435 people voted on the public measure but did not vote for the at-large election.

The only means to determine the exact number of people who voted for school officials in the district race or the at-large race is to manually review the ballots. Def. Ex. M, p. 2. There is no indication in section 435F.4(2)(b) that the legislature intended the Polk County Elections Office

to go to that much effort to determine the minimum number of signatures needed on a petition. Moreover, the Elections Office only holds ballots for six months following city and school elections. *Id*. Depending on the timing of the section 423F.4(2)(b) petition, the Elections Office may not even have the ballots to conduct the count. In that event, there would be no means to determine the correct number of signatures needed. The legislature clearly did not intend that result.

Iowa courts favor practicality when interpreting statutes. *See State v. Iowa Dist. Ct.*, 889 N.W.2d 467, 473 (Iowa 2017). "Generally, [courts] try to interpret statutes so they are reasonable and workable." *Id*. Defendant's approach easily determines the number of voters in the preceding election. The general public can easily obtain that number from the County Board of Supervisors. *See* Def. Ex. E. Defendants' approach is much more practical and does not carry the concerns and inconsistencies that exist with Plaintiffs' approach.

Moreover, Defendants' interpretation does not defeat the legislative intent. *See State v. Schmidt*, 588 N.W.2d 416, 420 (Iowa 1998) (courts should avoid an interpretation that would "defeat the manifest intent of the legislature."). The legislature set a formula to determine the number of petition signatures without any idea what the number would be. The legislature does not how many people that will vote in any particular election. The number of voters may vary greatly from election to election. Further, the 30 percent factor is arbitrary and no magic number. It simply helps set a bar which petitioners must hurdle before forcing a special election on SAVE revenue. Defendants' interpretation may set the bar higher if more voters are included in the calculation, but there is no showing that interpretation will defeat the legislative intent.

For these reasons, the Court finds that the District correctly set the number of voters that must sign the SAVE petition. The District correctly refused to accept the petition because the number of signatures did not reach the amount needed to trigger a special election.

C. Whether Defendants Violated Plaintiffs' Substantive Due Process Rights

Finally, Plaintiffs allege that the District's failure to call a referendum vote "effects a total and complete disenfranchisement of the electorate as a whole, which is a substantive violation of the Due Process Clause of the Fourteenth Amendment of the United States Constitution." Pet. ¶¶ 57–58 (citing *Bonas v. Town of N. Smithfield*, 265 F.3d 69, 75 (1st Cir. 2001)). As previously discussed, Plaintiffs assert that pursuant to Iowa Code § 423F.4(2)(b), their petition requesting a special election included 7,120 signatures, which represented more than thirty percent of the votes at the last preceding election of school officials. *Id.* at ¶ 60. Therefore, Plaintiffs contend that the Board was required under § 423F.4(2)(b) to "either rescind its adoption of the resolution or direct the county commissioner of elections to submit the question to the registered voters of the school district at" a special election. *Id.* at ¶ 61 (quoting Iowa Code § 423F.4(2)(b)). Plaintiffs argue that by failing to follow these statutory requirements, "Defendants unlawfully deprived Plaintiffs of the fundamental right to vote in violation of the Due Process Clause of the Fourteenth Amendment of the United States Constitution." *Id.* at ¶ 65.

In response, Defendants assert that this claim fails as a matter of law because the right to petition to submit a question for public referendum on a ballot does not implicate the federal constitutional right to vote. Defs.' Br. p. 23. Defendants argue that they have not violated either Plaintiffs' procedural or substantive due process rights. *Id.* at pp. 23–26. However, Plaintiffs only allege a claim of *substantive* violation of their due process rights. Pet. ¶ 58. Plaintiffs do not mention procedural due process in either their Petition or their reply to Defendants' brief, and none

of their claims allege deficiencies with notice or opportunity to be heard.[4] Therefore, the Court focuses solely on substantive due process.

The Due Process Clause of the Fourteenth Amendment states that "[n]o State shall . . . deprive any person of life, liberty, or property, without due process of law." U.S. CONST. amend. XIV, § 1. "In the context of substantive due process, an individual must overcome a very heavy burden to show a violation of the Fourteenth Amendment." *Hall v. Ramsey Cnty.*, 801 F.3d 912, 917 (8th Cir. 2015).[5] The substantive due process analysis begins "with a careful description of the asserted right" and "[n]arrow tailoring is required only when fundamental rights are involved." *Bowers v. Polk Cnty. Bd. of Supervisors*, 638 N.W.2d 682, 694 (Iowa 2002). *See also State ex rel. Miller v. Smokers Warehouse Corp.*, 737 N.W.2d 107, 111 (Iowa 2007) ("A substantive due process analysis begins with an identification of the nature of the right at issue, as that determines the test to be applied."). The impairment of an interest less than a fundamental right "demands no more than a 'reasonable fit' between governmental purpose . . . and the means chosen to advance that purpose." *Id.* (quoting *Reno v. Flores*, 507 U.S. 292, 305 (1993) (alteration in original)).

"To establish a substantive due process violation under the Fourteenth Amendment, [the plaintiff] must show that [the defendant's] conduct was 'so egregious, so outrageous, that it may fairly be said to shock the contemporary conscience.'" *Braun v. Burke*, 983 F.3d 999, 1002 (8th Cir. 2020) (quoting *Terrell v. Larson*, 396 F.3d 975, 978 (8th Cir. 2005) (en banc)). *See also Zaber v. City of Dubuque*, 789 N.W.2d 634, 640 (Iowa 2010) ("Generally speaking, substantive due

[4] As the Court noted in part A of this decision, the issue of prejudice is similar to a procedural due process argument. For reasons discussed in part A, any procedural due process claim would have been denied for the same reasons.

[5] The Iowa Supreme Court has also long recognized that "[a] substantive due process violation is not easy to prove" and agrees with another court's observation that "substantive due process is reserved for the most egregious governmental abuses against liberty or property rights, abuses that shock the conscience or otherwise offend . . . judicial notions of fairness . . . ." *Blumenthal Inv. Trs. v. City of West Des Moines*, 636 N.W.2d 255, 265 (Iowa 2001) (internal quotation marks omitted) (quoting *Rivkin v. Dover Twp. Rent Leveling Bd.*, 143 N.J. 352, 366–67 (N.J. 1996)).

process principles preclude the government from engaging in conduct that shocks the conscience or interferes with rights implicit in the concept of ordered liberty." (internal citations and quotation marks omitted)). According to the Eighth Circuit, to reach this high bar, the alleged violation of due process "must involve conduct 'so severe . . . so disproportionate to the need presented, and . . . so inspired by malice or sadism rather than a merely careless or unwise excess of zeal that it amounted to a brutal and inhumane abuse of official power literally shocking to the conscience.'" *Truong v. Hassan*, 829 F.3d 627, 631 (8th Cir. 2016) (alteration in original) (quoting *Moran v. Clarke*, 296 F.3d 638, 647 (8th Cir. 2002), abrogation on other grounds recognized by *Stockley v. Joyce*, 963 F.3d 809 (8th Cir. 2020)).

To satisfy this standard, the United States Supreme Court has recognized that "conduct intended to injure in some way unjustifiable by any government interest is the sort of official action most likely to rise to the conscience-shocking level." *Cnty. of Sacramento v. Lewis*, 523 U.S. 833, 849 (1998). *See also Daniels v. Williams*, 474 U.S.327, 331 (1986) ("Historically, this guarantee of due process has been applied to *deliberate* decisions of government officials to deprive a person of life, liberty, or property." (emphasis in original)). However, when culpability of the government official falls within the middle range, "following from something more than negligence but less than intentional conduct, such as recklessness or gross negligence," it is a closer call. *Cnty. of Sacramento*, 523 N.W.2d at 849 (citation omitted) (internal quotation marks omitted). Therefore, the court must assess the totality of the facts in a given case "to determine whether the behavior is conscience-shocking." *Hall*, 801 F.3d at 917–18.

"Because the conscience-shocking standard is intended to limit substantive due process liability, it is an issue of law for the judge, not a question of fact for the jury." *Terrell*, 396 F.3d at 981. Therefore, this issue is properly resolved on summary judgment.

In the present case, Plaintiffs assert that Defendants infringed their right to vote. Plaintiffs argue that the right to vote is clearly a fundamental right in Iowa and across the country: "It occupies an irreducibly vital role in our system of government by providing citizens with a voice in our democracy and in the election of those who make the laws by which all must live . . . . " Pls.' Reply p. 10 (quoting *Chiodo v. Section 43.24 Panel*, 846 N.W.2d 845, 848 (Iowa 2014)). However, the dispute here is not whether voting is a fundamental right, but rather whether the present case implicates violation of the right to vote or the right to *petition* to obtain the right to vote. *See* Defs.' Br. p. 26; Defs.' Reply p. 17 (stating that "this case involves only the right to petition to obtain the right to vote").

In support, Defendants rely on *Bowers v. Polk County Board of Supervisors*, which involved a board's use of bonds to fund an urban renewal project and the public's right to submit a petition for a special election. 638 N.W.2d, 682, 687 (Iowa 2002). In identifying the protected interested that the plaintiff alleged was affected by the petition process, the *Bowers* court concluded that despite plaintiff's argument, it was not a protected interest in the "right to vote" because "[t]he petition process [did] not prohibit [plaintiff] from exercising his right to vote." *Id.* at 692. Citing to a case from Georgia, the Iowa Supreme Court adopted the principle that "referendums, unlike general elections for a representative form of government, are not constitutionally compelled" and thus do not involve the "right to vote." *Id.* (quoting *Kelly v. Macon–Bibb Cnty. Bd. of Elections*, 608 F.Supp. 1036, 1038 (M.D.Ga.1985)).[6] Therefore, the *Bowers* court concluded that "[t]he only right [plaintiff] had was what the legislature gave him: the right to petition to obtain the right to vote." *Id.*

[6] "Where a statute provides for an expression of direct democracy, such as by initiative or referendum, it does so as a matter of legislative grace; the right to participate in such a process is not fundamental to our Constitution." *Bowers*, 638 N.W.2d at 692 (quoting *Kelly*, 608 F.Supp. at 1038 n. 1).

Furthermore, the court stated "it is extremely doubtful that this right is a protected interest for substantive due process purposes" and concluded that, in any event, "it clearly is not a fundamental right." *Id.* at 694. Rather, the court described this right as "minimal at best." *Id.* at 692. Based on this determination, the court explained that the proper level of scrutiny indicates "due process . . . demands no more than a reasonable fit between the governmental purpose and the means chosen to advance that purpose." *Id.* at 694–95.

Plaintiffs argue that any analogy to *Bowers* is misplaced because rather than challenging the petition process under § 423F.4(2)(b), Plaintiffs "seek to vindicate the substantive right to vote section 423F.4(2)(b) grants them *because they satisfied the petition process*." Pls.' Br. pp. 11–12 (emphasis in original). However, the governmental purpose identified by the *Bower* court is the same interest in the present case:

> The State of Iowa has an important, if not compelling, interest in protecting the integrity, fairness, and efficiency of its election process. [The petition process] winnows out petitions that lack substantial public support from those that spark the interest of the citizenry. The statute spares the counties substantial cost and administrative burden of calling a special election for an unsupported referendum . . . .

Bowers, 638 N.W.2d at 693 (alterations in original).

The Court concludes that the proper interest implicated by the present case is Plaintiffs' right to petition to obtain the right to vote. Nevertheless, regardless of whether the proper issue is violation of Plaintiffs' right to vote or right to petition to obtain the right to vote, the Court concludes that the alleged violation of Plaintiffs' substantive due process rights under the Fourteenth Amendment does not meet the high "conscience-shocking" standard. Although the Board failed to follow the procedure for petitions regarding public measures by not returning the petition to Pardock, this hardly qualifies as conduct so severe as to be inspired by malice rather than carelessness. *See Truong*, 829 F.3d at 631. There is no evidence that the Board deliberately

deprived Plaintiffs of their right to petition to vote. *Daniels*, 474 U.S.at 331. Furthermore, the Board's failure to return the petition to Pardock upon determining it was not valid on its face does not qualify as conduct that is "so egregious, so outrageous, that it . . . shock[s] the contemporary conscience" as the high standard for violations of substantive due process under the Fourteenth Amendment requires. *Braun*, 983 F.3d at 1002.

Therefore, the Court grants summary judgment on this issue in favor of Defendants and hereby dismisses Plaintiffs' due process claim.

CONCLUSION

Plaintiffs' motion for summary judgment is denied. Defendants' Counter-Motion for Summary Judgment is granted. This case is dismissed. Plaintiffs shall pay any court costs.

State of Iowa Courts

Case Number	**Case Title**
CVCV060495	SAVE OUR STADIUMS ET AL VS DES MOINES SCHOOLS ET AL
Type:	ORDER REGARDING DISMISSAL

So Ordered

Jeffrey Farrell, District Court Judge,
Fifth Judicial District of Iowa

Electronically signed on 2021-07-02 17:25:00