

IN THE DISTRICT COURT FOR LYON COUNTY

BRIAN HILT Petitioner,  v.  LYON COUNTY OBJECTIONS PANEL & COUNTY COMMISSIONER OF ELECTIONS  Respondents	No.  PETITION FOR JUDICIAL REVIEW  <b>(EXPEDITED CONSIDERATION REQUESTED)</b>
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Plaintiff, Brian Hilt, seeks judicial review of the decision of the Lyon County Objections Panel to not sustain the objection to the nomination papers and eligibility of Stewart Vander Stoep to be a nominee for the Libertarian Party for the office of Sheriff of Lyon County.

**Agency**

1. The agency from which this action is appealed is the Lyon County Objections Panel consisting of three elected county officials (two elected members of the Board of Supervisors and the County Recorder). Iowa Code 43.24(1)
2. The panel adjudicates objections to the legal sufficiency of nomination papers and eligibility filed by a voter of Lyon County. Iowa Code 43.24(1)

**Agency Action**

3. On September 3, 2024, the Panel met to hear the objections to the nomination papers and eligibility of candidate Stewart Vander Stoep to be the Libertarian nominee for the office of Sheriff of Lyon County.
4. One individual filed an objection to the nomination papers and eligibility of Stewart Vander Stoep.
5. After the hearing, the Panel voted 2-1 to not sustain the objections (ruling received September 4, 2024).
6. The County Recorder and one County Supervisor voted to not sustain the objection.
7. The other County Supervisor voted to sustain the objection and issued a dissenting opinion.

8. The plaintiff appeals the Panel's decision and from all adverse rulings and orders therein.

### **Venue**

9. Venue for a judicial review action in this matter is appropriate in Lyon County as it is the county in which the petitioner resides. Iowa Code 17A.19(2)

### **Grounds Upon Which Relief is Sought**

10. The Panel's decision is based upon an erroneous interpretation of a provision of law whose interpretation has not clearly been vested by a provision of law in the discretion of the panel. Iowa Code 17A.19(10)(c).
11. The Panel's decision was the product of reasoning so illogical as to render it wholly irrational. Iowa Code 17A.19(10)(i).
12. The Panel's decision was otherwise unreasonable, arbitrary, capricious, or an abuse of discretion. Iowa Code 17A.19(10)(n).

### **Background Facts**

13. In the 2022 general election in Iowa, the Libertarian Party candidate for Governor, Rock Stewart, received more than 2% of the vote total.
14. The party then filed the application for party status provided by Iowa Code 43.2 and IAC 721-21.10(1).
16. The Iowa Secretary of State declared the Libertarian Party a qualified political party, a status, a status that would apply for the 2024 election cycle and each succeeding cycle in which the Libertarian Party had a nominee for either president or governor and achieved more than 2% of the vote.
17. Stewart Vander Stoep was a candidate for the Republican nomination for Sheriff of Lyon County in the 2024 primary election held on June 4, 2024.
18. Stewart Vander Stoep lost the primary election for the Republican nomination.
19. On the June 4, 2024, Libertarian Party primary election, there were only two Libertarian ballots cast. One of those ballots was a blank ballot. The second ballot had a write-in vote for Stewart Vander Stoep for the office of Sheriff of Lyon County.
20. On June 5, 2024, the County Auditor emailed a staff member at the Iowa Secretary of State and asked, "However, we had 1 vote cast for libertarian sheriff and it was a write in and it

was the incumbent who lost. I just want to verify with the SOS that they won the Libertarian nomination for November since we have never had a prior election to compare?”

21. On June 5, 2024, a staff member at the Iowa Secretary of State replied to the County Auditor, “That is correct. That individual can accept the Libertarian nomination if they so choose. Note that they’ll need to file an affidavit of candidacy within 7 days of the canvass and the affidavit must indicate the party they were nominated by, regardless of their affiliation. They will then appear on the November ballot with that party affiliation.”
22. Stewart Vander Stoep filed an Affidavit of Candidacy indicating a Candidate’s Affiliation of Libertarian on June 17, 2024.
23. Stewart Vander Stoep did not file a Certificate of Nomination from the Libertarian Party at all and the Libertarian Party never held a county convention after the primary election.
24. On August 28, 2024, Brian Hilt filed an objection to Stewart Vander Stoeps nomination papers and eligibility to be the Libertarian Party nominee for the office of Sheriff of Lyon County (see attached).
25. The gist of the objection is that Stewart Vander Stoep is not eligible to be the Libertarian Party nominee as the legal requirements of Iowa Code sections 43.52 and 43.66 were not met resulting in an inconclusive primary election, that a county convention was not held per 43.78 as required in Iowa Code sections 43.52 and 43.66, and that thereby no Certificate of Nomination was filed with the County Auditor along with the Affidavit of Candidacy as clearly required by Iowa code.
26. Following a hearing on the objection held on September 3, 2024, the Panel voted 2-1 to not sustain the objection (ruling received September 4, 2024).

### **Relief Sought**

27. The plaintiff requests the Court reverse the Panel’s decision and order that the objection be sustained.
28. The plaintiff has submitted with this petition an application for expedited consideration due to the need to finalize and print ballots for the November general election.

### **Argument**

There are multiple grounds on which this Court should reverse the decision of the Panel. First, the Panel incorrectly applied Iowa Code 4.1 regarding the singular and the plural of “votes.”

Second, the Panel erred in their interpretation of like-panels' findings regarding liberally construing statutes governing nominations. Third, the Panel erred in relying on an opinion of an Iowa Secretary of State staff member and the Lyon County Auditor when there were no code sections or grounds in their communication or rationale for their decision. Fourth, the Panel errs in stating that the "law surrounding this is far from clear." Fifth, the Panel incorrectly states the Challenger made a "compelling argument that the law is ambiguous." Sixth, the Panel does not fulfill their duty when deciding based on what they find is "far more preferable" instead of deciding based on the clear language of the Iowa code. Seventh, the Panel does not properly apply and decide the objection based on the clear language of Iowa Code sections 43.52, 43.66, and 43.78 along with the formal A.G. Opinions and historical precedence. Eighth, the Panel erred in inferring that sustaining the objection would hinder providing "every lawful opportunity for the electors to express their preference at the ballot box." Ninth, the panel erred in not considering the experience and knowledge of Stewart Vander Stoep.

**1. The Panel incorrectly applied Iowa Code 4.1 regarding the singular and plural of "votes."**

Iowa Code section 4.1(17) states that there are exceptions to the singular meaning the plural and the plural the singular when it says, "unless otherwise specifically provided by the law." There are multiple Attorney General Opinions which interpret the use of "votes" in 43.66 to require "some number of votes, more than 1." (Iowa A.G. Opinion No. S68-9-3) The Iowa A.G. Opinion No. 76-5-15 states, "We believe that there is an intent manifest in 43.66 and the other provisions of Chapter 43 that a significant number of votes be required for a write-in candidate to be nominated in the primary election."

Though not binding on the Court, the Panel does not give weight to the A.G. Opinions properly as local officials. They did not use them to assist in considering the meaning and intent of the law.

As stated in the Dissenting Opinion, "While Iowa Code 4.1(17) provides that generally "votes" could be interpreted as "vote," because the A.G. Opinions have specifically defined "votes" to require more than one vote, local officials should use the A.G. Opinions guidance to require more than one vote."

This is also seen in the history of Iowa Code section 43.66. As pointed out in the objection and the Dissenting Opinion, "The legislative intent of the threshold is clear - a significant number of votes (now 35%) is required for write-in candidates."

**2. The Panel erred in their interpretation of like-panels' findings regarding liberally construing statutes governing nominations.**

The Panel's interpretation and application of "liberally construing" would allow candidates not to follow clear requirements of the law. They indicate a desire to let the voters decide. However noble they may think this is, it is not consistent with the law and would defeat the purpose of a primary election and the laws regarding nomination by political parties.

Liberalizing statutes is intended for when there are, as the Panel stated, "statutory ambiguities." However, there are no statutory ambiguities in this case.

Further, there is no exception for substantial compliance to a candidate or party failing to adhere to the requirement that it must hold a county convention. "The general rule is that, unless there is language allowing substantial compliance, election statutes are mandatory and must be strictly complied with." *State ex rel. Simonetti v. Summit County Bd. Of Elections*, see also *Neal v. Bd. Of Sup'rs, Clarke Cnty.*, (Iowa 1952), "Statutory directions as to time and manner of giving notice of an election are mandatory and will be strictly upheld where the action is brought prior thereto."

**3. The Panel erred in relying on an opinion of an Iowa Secretary of State staff member and the Lyon County Auditor when there were no code sections in their communication or rationale for their decision.**

The email exchange between the Lyon County Auditor and the staff member from the Secretary of State contained no references to Iowa code (including 43.52, 43.66, and 43.78) and provided no justification or grounds for deviation from the clear requirements of Iowa code and the formal A.G. Opinions. Though it may have seemed reasonable to give their opinion weight, they blindly gave it weight despite no explanation for the deviation from the requirements of the Iowa code. There was no discussion on the requirements of 43.66, why the requirements of 43.66 did not have to be met, and why it was not an inconclusive election. In the absence of this, the Panel blindly relied upon one email exchange with no basis.

**4. The Panel errs in stating that the "law surrounding this is far from clear."**

Though this is an opinion of the Panel, it is not correct. The requirements of Iowa Code sections 43.52, 43.66, and 43.78 are quite clear. This is especially the case with the guidance contained in the formal A.G. Opinions as well as the past practice of IAC 721-21.602(43). The law, A.G. Opinions, and historical practice are clear.

**5. The Panel incorrectly states the Challenger made a "compelling argument that the law is ambiguous."**

Simply put, the Challenger never made this argument. Rather, the challenger made the argument that the code is clear. The Challenger wrote, “This also does not negate that the clear language of the code and obvious intent...” It is simply not accurate to state the Challenger argued ambiguity when the objection was arguing the clear language of the code.

**6. The Panel does not fulfill their duty when deciding based on what they find is “far more preferable” instead of deciding based on the clear language of the Iowa code.**

The duty of the Panel was not to decide the objection based upon what they believed to be more preferable. It was to decide based on the law and the “legal sufficiency” and “eligibility of a candidate” in harmony with Iowa Code 43.24(1)(a). Finding based on what they believe, in their opinion, to be more preferable improperly places them in the role of legislators instead of a panel. This is an example of reasoning that is so illogical as to render it wholly irrational (Iowa code 17A.19(10)(i)) and action that is otherwise unreasonable, arbitrary, and an abuse of discretion (Iowa code 17A.19(10)(n)).

The *Chiodo v. Section 43.24 Panel* case in 2014 also bears some relevancy. Here the challenge to the candidacy was not restricted to the contents of the Affidavit of Candidacy, but the panel and Court looked beyond the document to its legal meaning and validity. So here, the Panel and Court must look beyond what is simply written on the document (or to the fact that there wasn’t even a Certificate of Nomination document) to the legal meaning and validity.

Iowa Code section 43.53 also bears some relevancy. Though directly applicable to elections for offices of a sub-division of a county, this section requires a minimum of five write-in votes for candidates for the office of a sub-division of a county. In harmony with Chapter 43, smaller voter populations have a smaller number of requirements for signatures and votes, so it follows that someone validly nominated via write-in votes would need more write-in votes than the five minimum required for a sub-division office.

**7. The Panel does not properly apply and decide the objection based on the clear language of Iowa Code sections 43.52, 43.66, and 43.78 along with the formal A.G. Opinions and historical precedence.**

This is the root of the matter. The Panel (along with the Secretary of State staff member and the County Auditor) when they do not follow the clear language of the Iowa Code in these sections.

These sections are not ambiguous, but clear. The interpretation of the Panel was not construing the statutes liberally, but rather it was disregarding the requirements clearly laid out in the law.

The law is clear. Iowa Code section 43.52 governs elections for county-wide offices. The code requires that a candidate receive 35% or more of the votes cast in the current election by the

voters of the candidate's party for the office sought (43.52(1)(b)). Stewart Vander Stoep received one of one vote cast by the Libertarian Party in the primary, but that was not the "candidate's party" as the candidate was a registered Republican not a registered Libertarian.

As well, in this case, 43.52 does not stand alone in governing the election and nomination of candidates. Due to Stewart Vander Stoep not being on the ballot for the Libertarian Party primary election, no candidate at all being on the Libertarian Party primary ballot for the office of Sheriff, and the singular vote being a write-in vote, Iowa Code section 43.66 must also be considered.

The Panel (and the Secretary of State staff member and County Auditor) erred in not considering the requirements of 43.66. The Panel wrote, "...so it seems reasonable to give their opinion about Iowa Code Section 43.66 some weight." However, the Secretary of State never cited giving an opinion about 43.66 and appears to only give an opinion about 43.52. The Secretary of State correspondence only referred to the votes cast in the current election (a provision of 43.52) and not the requirements of 43.66 regarding a total number of votes as a percentage of total votes cast in a prior election. It was improper to apply the 35% requirement of 43.66 to the present election as 43.66 requires it to be applied to a prior election. It is not proper to conclude, "that because a single write-in vote constituted 100% of the Libertarian vote, (in prior primaries there have been no Libertarian votes) it exceeded Iowa Code Section 43.66's 35% threshold (100%)." Again, this is an incorrect conclusion because 43.66 specifically addresses 35% of the votes cast in a prior election, not the current election.

Thus, the Panel does not at all properly consider Iowa Code section 43.66 and it appears that the Secretary of State staff email and the County Auditor did not either.

Iowa Code section 43.66 states:

"The fact that the candidate who receives the highest number of votes cast for any party's nomination for an office to which section 43.52 or 43.65 is applicable is a person whose name was not printed on the official primary election ballot shall not affect the validity of the person's nomination as a candidate for that office in the general election. However, if there is no candidate on the official primary ballot of a political party for nomination to a particular office, a write-in candidate may obtain the party's nomination to that office in the primary if the candidate receives a number of votes equal to at least thirty-five percent of the total vote cast for all of that party's candidates for that office in the last preceding primary election for which the party had candidates on the ballot for that office. If there have been no candidates from a political party for a seat in the general assembly since the most recent redistricting of the general assembly, a write-in candidate shall be considered nominated who receives a number of votes equal to at least thirty-five percent of the total votes cast, at the last preceding primary election in the precincts which currently constitute the general assembly district, for all of that party's candidates for representative in the Congress of the United States or who receives at least one hundred votes, whichever number is greater. When two or more nominees are required, the division procedure prescribed in section 43.52 shall be

applied to establish the minimum number of write-in votes necessary for nomination. If the primary is inconclusive, the necessary nominations shall be made in accordance with section 43.78, subsection 1.”

In the circumstances where there “is no candidate on the official primary ballot of a political party for nomination to a particular office” we read first that a “write-in candidate may obtain the party’s nomination to that office in the primary if the candidate receives a number of votes equal to at least thirty-five percent of the total vote cast for all of that party’s candidates for that office in the last preceding primary election for which the party had candidates on the ballot for that office.

The code here is specific. It requires the 35% to be multiplied against the number of votes cast in a preceding primary. This is not what was done by the Panel, the Secretary of State staff member, or the County Auditor.

There is guidance that could have been followed from formal A.G. Opinion and historical practice, but that was ignored. A.G. Opinion No. 76-5-15 dealt with a similar situation. The opinion states, “Where, as in the situation you describe there is no total to which to apply the 35%, we do not believe it would be unreasonable to require that the vote cast for the party’s candidate for governor in the last primary election be used.” This clearly indicates that the 35% must be multiplied against the number of votes cast in a prior election in which the party voted for a candidate for the party, not the current election results.

There is also a similar historical practice which was not followed. IAC 721-21.602(43) addressed this in 2002 when the Green Party had obtained major party status. The guidance of the rule was to apply the 35% requirement of 43.66 to the total number of votes cast in the previous general election for the party’s candidate for president or governor. This former practice could have been followed as in the 2022 general election there was a Libertarian Party candidate for governor on the general election ballot in Lyon County. That candidate received 26 votes. 35% of the 26 votes is 9.1 (rounded up to 10) votes. However, Stewart Vander Stoep received only one singular write-in vote.

In not applying this 35% requirement to a prior election’s number of votes cast, they all erred.

Continuing, code section 43.66 states, “If there have been no candidates from a political party for a seat in the general assembly since the most recent redistricting of the general assembly, a write-in candidate shall be considered nominated who receives a number of votes equal to at least thirty-five percent of the total votes cast, at the last preceding primary election in the precincts which currently constitute the general assembly district, for all of that party’s candidates for representative in the Congress of the United States or who receives at least one hundred votes, whichever number is greater.”



This portion of the code applies to elections under 43.52 as specifically stated in the first sentence of section 43.66. The code section never deviates from applying to elections under 43.52, and thus the entirety of the section applies.

There have been no Libertarian Party candidates for a seat in the general assembly since the most recent redistricting of the general assembly, so a write-in candidate for the Libertarian Party must receive a number of “votes equal to at least thirty-five percent of the total votes cast, at the last preceding primary election in the precincts which currently constitute the general assembly district, for all of that party’s candidates for representative in the Congress of the United States or who receives at least one hundred votes, whichever is greater.”

The code here then requires a minimum of 100 write-in votes, and Stewart Vander Stoep received only one.

As a result of not fulfilling the requirements of section 43.66 the primary election was inconclusive and the clear requirement of the law then is, “If the primary is inconclusive, the necessary nominations shall be made in accordance with section 43.78, subsection 1.”

There is no ambiguity here. The law is clear that the nominations shall be made in accordance with section 43.78, subsection 1.

The Panel does not examine this requirement at all or 43.78. This despite it being pointed out multiple times in the oral statements of the Challenger at the hearing.

Iowa Code section 43.78(1)(d) states that a vacancy on the general election ballot may be filled by the political party for “any office to be filled by the voters of an entire county, by the party’s county convention, which may be reconvened by the county party chairperson if the vacancy occurs after the convention has been held or too late to be filled at the time it is held.”

Hence, it is very clear that the requirement to be legitimately and legally nominated by the Libertarian Party, the Libertarian Party in Lyon County needed to have called a county convention at which they could have voted to nominate Stewart Vander Stoep. Had this been done, the Libertarian Party would have needed to provide a Certificate of Nomination to him which was required to be filed with the County Auditor along with the Affidavit of Candidacy.

This was not done, however. The clear, unambiguous requirements of the law were not followed, and the result is that the objection must be sustained and Stewart Vander Stoep found to not be the Libertarian Party candidate for Sheriff of Lyon County in the general election.

**8. The Panel erred inferring that sustaining the objection would hinder providing “every lawful opportunity for the electors to express their preference at the ballot box.”**

The reference to multiple panel decisions regarding providing every lawful opportunity for electors to vote was improperly applied in this situation.

First, electors in Lyon County already had the opportunity to vote in the primary election for Stewart Vander Stoep or his opponent. Both were competing for the Republican nomination, and electors from any other party could have registered as Republicans at the polling place and cast their vote. So, every elector already had the opportunity to vote between Stewart Vander Stoep and the Challenger.

Second, the word “lawful” is very important. As has been already demonstrated, the law is clear and unambiguous that it is not lawful for Stewart Vander Stoep to be the nominee for Sheriff for the Libertarian Party on the general election ballot.

Third, even in the general election, every elector has a lawful opportunity to vote for Stewart Vander Stoep if they so choose. There is no prohibition against voting for him via write-in votes in the general election.

Fourth, in *Am. Party of Tex. V. White* (1974) we read, “We have considered it too plain for argument, for example, that a State may require parties to use the primary format for selecting their nominees, in order to assure that intraparty competition is resolved in a democratic fashion,” and in *Jeness v Fortson* (1971) we find, “Similarly, in order to avoid burdening the general election ballot with frivolous candidacies, a State may require parties to demonstrate ‘a significant modicum of support’ before allowing their candidacies a place on that ballot.” Thus, following the basic, simple rules of Chapter 43 of the Iowa code do not limit the rights of the party or the rights of the voters to participate in the election.

#### **9. The panel erred in not considering the experience and knowledge of Stewart Vander Stoep.**

It has already been addressed how the Panel did not properly apply liberally construing the law as the law in this case is not ambiguous. It is worth noting as well that this is especially the case in these circumstances.

Stewart Vander Stoep is not someone uneducated on the reading and interpretation of the law or elections. He has been a peace officer in Iowa for around 38 years. He has served as Sheriff of Lyon County for nearly 12 years. He has run for nomination in three previous primary elections and general elections. In 2012, he sought the Republican nomination in the primary election but lost. After losing the primary election, he sought to be (and was) nominated by petition and was included on the general election ballot as a result of this.

Stewart Vander Stoep has also served on the Republican Party Central Committee, and as such ought to have knowledge about the election process and requirements of the law.

So, Stewart Vander Stoep has experience as a law enforcement officer, elected official, party central committee member, and the various ways of obtaining a nomination to be placed on the general election ballot.

This attempt to be placed on the general election ballot after losing the primary election is not only unlawful, but it is, as the Dissenting Opinion states, “contrary to the legislative intent, the statutory framework, and the policies of fair play in elections.”

Respectfully submitted,

By:

Handwritten signature of Brian Hilt and the date 9/7/2024.

Brian Hilt, Plaintiff  
3147 210<sup>th</sup> St.  
Rock Rapids, IA 51246  
(515) 992-9608  
hiltforsheriff@gmail.com