

IN THE SUPREME COURT OF IOWA
Supreme Court No. 18-0811

SIOUX CITY HUMAN RIGHTS COMMISSION OF THE CITY OF
SIOUX CITY, IOWA and JAMES RIXNER,
Plaintiffs-Appellants,

vs.

JAMES W. BOYD REVOCABLE TRUST AND JENNIFER BOYLE
AND JAMES W. BOYD, Individually,
Defendants-Appellees.

APPEAL FROM THE IOWA DISTRICT COURT
FOR WOODBURY COUNTY
THE HONORABLE JEFFREY L. POULSON, JUDGE

**BRIEF OF PROPOSED AMICUS CURIAE IOWA CIVIL
RIGHTS COMMISSION**

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INTEREST OF AMICUS CURIAE IOWA CIVIL RIGHTS COMMISSION

The Iowa Civil Rights Commission (Commission) is the state agency charged with the administration of the Iowa Civil Rights Act (ICRA). This includes promulgation of interpretative rules, receipt and investigation of administrative charges of discrimination, and the holding of contested case hearings to determine whether the ICRA has been violated. The jurisdiction of the Commission includes certain types of discrimination in housing, employment, education, credit and public accommodations. Iowa Code §§ 216.6-216.10.

In its administration of the ICRA, the Commission keeps “in view . . . its beneficial purposes in exposing unlawful discrimination.” *Hulme v. Barrett*, 449 N.W.2d 629, 633 (Iowa 1989). The Commission is specifically authorized by the ICRA to file complaints through the Commission itself or a commissioner. Iowa Code § 216.15(1). In ruling on the case at hand, the district court found that the Commission lacks that specific statutorily-authorized power, and instead can only file a complaint on behalf of some other underlying aggrieved party. This ruling was in error.

The Commission has a strong interest in Iowa courts’ interpretations of its enabling statute. The district court incorrectly

interpreted the ICRA, and by doing so limits the statutory authority of the Commission. Additionally, by finding a local civil rights commission lacks standing to bring an ICRA case based on testing evidence, the district court's approach will quash robust enforcement of the ICRA and frustrate the Commission's statutory mission to eliminate discrimination in the state. Iowa Code § 216.5.

This brief was solely authored by the Assistant Attorney General for the Iowa Civil Rights Commission and not by any party or party's counsel. No party or party's counsel contributed money to fund the preparation or submission of this brief.

STATEMENT OF THE CASE

Appellants Sioux City Human Rights Commission and James Rixner appeal from, in part, an order by the district court granting appellees James W. Boyd Revocable Trust, Jennifer Boyle, and James Boyd's Motion to Dismiss their Petition alleging housing discrimination.

Facts

Due to the procedural posture of this case, the only facts available to the Court are those alleged by the Sioux City Human Rights Commission and Rixner in their Petition, Amended Petition, and Second Amended Petition.

Briefly, the Sioux City Human Rights Commission and Rixner alleged that the Defendants engaged in housing discrimination. Second Amended Petition, ¶¶ 13-16. The allegations in the Petition were based on evidence collected through testing of landlords for compliance with anti-discrimination laws. *Id.* at ¶¶ 2-3. The Sioux City Human Rights Commission alleged that the Defendants' violations of fair housing law resulted in it expending resources to investigate the Defendants' conduct and a deflection of its time and

money away from other educational, training, and enforcement efforts. *Id.* at ¶¶ 3, 5.

ARGUMENT

The Commission takes no position on the Sioux City Human Rights Commission’s first argument regarding the Motion the Strike. The Commission’s argument only focuses on the district court’s interpretation regarding an “aggrieved party” under the Iowa Civil Rights Act.

I. The District Court Erred in its Interpretation of “Aggrieved Party” and Incorrectly Interpreted the Explicit Statutory Authority of the Iowa Civil Rights Commission to Bring Complaints on its Own Initiative

Preservation of Error

The district court rejected Sioux City Human Rights Commission and Rixner’s argument that both the Human Rights Commission and Rixner are aggrieved parties under the Iowa Civil Rights Act. Ruling on Plaintiff’s Motion to Reconsider Ruling on Motion to Dismiss/Strike and Amended Ruling on Defendants’ Motion to Dismiss/Strike, p. 6. This appeal followed. Error was preserved.

Standard of Review

A ruling on a motion to dismiss is reviewed for corrections of errors at law. *Hedlund v. State*, 875 N.W.2d 720, 724 (Iowa 2016).

Merits

The Iowa Civil Rights Commission is greatly concerned by the incorrect findings of the district court as related to the Iowa Civil Rights Commission's authority under the Iowa Civil Rights Act. Under the ICRA, the Iowa Civil Rights Commission is specifically authorized to file a civil rights complaint in its own name. *See* Iowa Code § 216.15(1) ("The commission, a commissioner, or the attorney general may in like manner make, sign, and file such complaint.") Following the filing of complaint, the Iowa Civil Rights Commission as the complainant is later able to file a petition in district court. *See* Iowa Code § 216.16.

The district court erred in finding "[w]hile section 216.15(1) does permit the commission, commissioner, or attorney general to file a complaint with the Commission, this Court interprets this provision and authorization for suit in district court, when read in conjunction with the additional sections of Chapter 216, to authorize filing on behalf of the underlying 'aggrieved party' who has been

discriminated against.” Ruling on Plaintiff’s Motion to Reconsider Ruling on Motion to Dismiss/Strike and Amended Ruling on Defendants’ Motion to Dismiss/Strike, p. 6. The district court found that the Iowa Civil Rights Commission, or local commissions such as the Sioux City Human Rights Commission, are unable to bring cases based on testing evidence. This is simply incorrect.

A. History of Testing Evidence in Discrimination Cases

In the fair housing enforcement context, testing refers to the use of individuals who, without any bona fide intent to rent or purchase a dwelling, pose as prospective buyers or renters of real estate for the purpose of gathering information. United States Department of Justice, Fair Housing Testing Program, <https://www.justice.gov/crt/fair-housing-testing-program-1> (last visited May 22, 2018); *Havens Realty Corporation v. Coleman*, 455 U.S. 363, 373 (1982).

Housing discrimination is often cleverly disguised as polite rejection rather than a slammed door. Testing, where a person who is a member of a protected class and a person who is not a member of that protected class’s experiences are directly compared, can bring to light shadowy discriminatory practices that would otherwise go

undiscovered. For example, a landlord may tell an applicant with children that a unit is unavailable, but then tell an applicant without children that unit is open. A properly designed test can reveal the discriminatory practice.

The United States Supreme Court has confirmed the importance and validity of fair housing testing. In *Havens*, the Court recognized that under the Fair Housing Act, all persons are entitled to truthful information about available housing. 455 U.S. at 373. The Court goes on to state:

A tester who has been the object of a misrepresentation made unlawful under [the Fair Housing Act] has suffered injury in precisely the form the statute was intended to guard against, and therefore has standing to maintain a claim for damages under the Act's provisions. That the tester may have approached the real estate agent fully expecting that he would receive false information, and without any intention of buying or renting a home, does not negate the simple fact of injury within the meaning of [the Fair Housing Act].

Id. at 373-74.

Likewise, under the ICRA, the definition of “person” includes the “state of Iowa and all political subdivisions and agencies thereof.” Iowa Code § 216.2(11). Substantively, the Iowa Civil Rights Act provides, “A person shall not discriminate against another person in the terms, conditions, or privileges of sale or rental of a dwelling or in

the provision of services or facilities in connection with the dwelling because of a disability.” Iowa Code §§ 216.8A(3)(b), .8(1)(a), .8(1)(b).

B. Prior Case Law of the Iowa Supreme Court

Inexplicably, the district court cites *State ex rel Claypool v. Evans*, 757 N.W.2d 166 (Iowa 2008) in support of its ruling. In *Claypool*, a man named Jeff Frank purchased a condominium. *Id.* at 167. He later filed a complaint with the Iowa Civil Rights Commission alleging design and construction deficiencies in his condo, which amounted to disability discrimination. *Id.* The Iowa Civil Rights Commission eventually filed an action in district court on behalf of Frank.

At the same time, Iowa Civil Rights Commission’s attorney, the Attorney General, filed a **separate** lawsuit in the name of Alicia Claypool, civil rights commissioner. *Id.* at 168. Claypool’s action was based on the discriminatory sale of the condominiums in Frank’s building to the public. *Id.* Although the district court combined the cases for summary judgment purposes, Claypool’s case was not based on any harm to Frank, but rather to the public by the defendant owners’ conduct. *Id.* at 168. Claypool’s case was not based on harm to any specific underlying “aggrieved party,” as the district court here

found to be required. Although admittedly not an argument presented by the parties, in *Claypool* the Iowa Supreme Court made no suggestion that Claypool, as a commissioner, lacked standing to bring her own suit.

C. The Commission Can Unquestionably File Testing Cases

When the Iowa Civil Rights Commission conducts testing for code compliance, its purpose is to uncover discriminatory practices and policies that hinder the Commission's mission to eliminate discrimination in the state. Iowa Code § 216.5(3). The Commission believes there are many, many acts of discrimination in the state each year that go unreported, and therefore, uncorrected. When the Commission uncovers discriminatory practices through testing for compliance with the Iowa Civil Rights Act, it can, and does, enter into agreements in which offending landlords are educated on the law and agree to change discriminatory policies so that future violations of the law do not occur. See Iowa Civil Rights Commission, Case Resolutions, <https://icrc.iowa.gov/case-resolutions/housing-settlement-agreements/settlement-agreements-fy-20172018> (last visited July 5, 2018) (providing links to housing settlement

agreements by the Commission, including testing complaints filed by Commissioner Angela Jackson).

In this case, the district court erred by disallowing complaints based on testing evidence despite no suggestion in the Iowa Civil Rights Act that testing evidence is not a basis for a civil rights complaint. The district court's requirement of an "underlying aggrieved party/person" ignores the plain language of the Iowa Civil Rights Act, which defines "person" to include agencies of the state of Iowa, and specifically authorizes the Iowa Civil Rights Commission to file suit. Iowa Code §§ 216.2(11), .15(1).

II. The Sioux City Humans Rights Commission can be an "Aggrieved Person" under the Iowa Civil Rights Act

Preservation of Error

The district court rejected Sioux City Human Rights Commission and Rixner's argument that both the Human Rights Commission and Rixner are aggrieved parties under the Iowa Civil Rights Act. Ruling on Plaintiff's Motion to Reconsider Ruling on Motion to Dismiss/Strike and Amended Ruling on Defendants' Motion to Dismiss/Strike, p. 6. This appeal followed. Error was preserved.

Standard of Review

A ruling on a motion to dismiss is reviewed for corrections of errors at law. *Hedlund v. State*, 875 N.W.2d 720, 724 (Iowa 2016).

Merits

The district court found the Sioux City Human Rights Commission is not an aggrieved party under the ICRA as defined and required under sections 216.16A(2)(a) and 216.17A(1)(a). The district court based its holding on the fact that the evidence in the case was procured by testers, acting under a contract with the Sioux City Human Rights Commission, and not by a member of the public who was actually seeking rental housing. Ruling on Motion to Dismiss/Strike, p. 3; R. at ____; Memorandum Brief in Support of Resistance to Respondents' Motion to Strike and to Dismiss; R. at ____.

This ruling was in error. The clear text of the Iowa Civil Rights Act, as well as case law, demonstrates the Sioux City Human Rights Commission had standing to file its Petition in its own name.

As noted above, under the ICRA, the definition of “person” includes the “state of Iowa and all political subdivisions and agencies thereof.” Iowa Code § 216.2(11). This includes the Sioux City Human Rights Commission. Substantively, the Iowa Civil Rights provides, “A

person shall not discriminate against another person in the terms, conditions, or privileges of sale or rental of a dwelling or in the provision of services or facilities in connection with the dwelling because of a disability.” Iowa Code §§ 216.8A(3)(b), .8(1)(a), .8(1)(b).

A. General Organizational Standing

In addition to the Commission and Attorney General, other organizations can bring suit under general standing principles. To have standing, a fair housing organization like the Sioux City Human Rights Commission must: 1) have a specific personal or legal interest in the litigation and 2) be injuriously affected. *Alons v. Iowa District Court for Woodbury County*, 698 N.W.2d 858 (Iowa 2005). Standing is used for a court to refuse to determine the merits of an action when the party advancing the action is not properly situated to prosecute the action. *Id.* In making a standing determination, the focus is on the party bringing the claim, not on the claim itself. *Id.* Under the Fair Housing Act, a party can obtain standing in a testing case if it forewent activities in furtherance of its mission to conduct the testing or if the discriminatory practice interfered with its ability to promote equal access to housing. *See Village of Bellwood v. Dwivedi*, 895 F.2d

1521, 1526 (7th Cir. 1990); *Saunders v. General Servs. Corp.*, 659 F. Supp. 1042, 1060 (E.D. Va. 1987).

“To establish an injury in fact, a party must ‘show that he personally has suffered some actual or threatened injury as a result of the putatively illegal conduct of the defendant.’” *Gerlich*, 861 F.3d at 704 (quoting *Valley Forge Christian Coll. v. Ams. United for Separation of Church & State, Inc.*, 454 U.S. 464, 472 (1982)). Where an organizational plaintiff asserts standing on its own behalf, as Plaintiffs do here, the organization also may establish standing by demonstrating the “deflection” of its financial and human resources arising from the challenged action. *Ark. ACORN Fair Hous., Inc. v. Greystone Dev., Ltd. Co.*, 160 F.3d 433, 434–35 (8th Cir. 1998). “Self-inflicted” harms do not convey standing, but where an organization incurs expenditures to counter the effects of a defendant’s alleged unlawful conduct, an organization sustains an injury in fact. *People for the Ethical Treatment of Animals v. U.S. Dep’t. of Agric.*, 797 F.3d 1087, 1096–97 (D.C. Cir. 2015); see also *Havens*, 455 U.S. at 378–79, (holding that the allegation that an organization had to divert resources from providing counseling and referral services to low-income home seekers to countering alleged discriminatory housing

practices constituted injury in fact, not “simply a setback to the organization’s abstract social interest”).

Here, the Sioux City Human Rights Commission properly pleaded that the Defendants’ violations of fair housing law resulted in it expending resources to investigate the Defendants’ conduct and a deflection of its time and money away from other educational, training, and enforcement efforts. *Id.* at ¶¶ 3, 5. “For purposes of reviewing a ruling on a motion to dismiss, we accept as true the petition's well-pleaded factual allegations, but not its legal conclusions.” *Shumate v. Drake Univ.*, 846 N.W.2d 503, 507 (Iowa 2014). At the motion to dismiss stage, the district court should have accepted these factual allegations and found that the Sioux City Human Rights Commission has standing to bring its Petition.

B. Effect of the District Court’s Ruling on the Iowa Civil Rights Commission

The Iowa Civil Commission cannot effectively fight discrimination alone. Enforcement efforts by local commission like the Sioux City Human Rights Commission along with private suits are all vital pieces to fight against discrimination in the state. The Iowa Civil Rights Act specifically requires cities to adequately fund their civil rights commissions “to effect cooperative undertakings with the

Iowa civil rights commission and to aid in effectuating the purposes of this chapter.” Iowa Code § 216.19(2). The district court’s finding that testing evidence, widely accepted across the country, is not valid under the Iowa Civil Rights is an incorrect holding and severely damaging to the efforts to eliminate discrimination in Iowa.

CONCLUSION

The district court erred in granting the Motion to Dismiss, and by finding civil rights commissions are not aggrieved parties under the Iowa Civil Rights Act after finding evidence of discrimination through testing. For all of the reasons above, the Court should reverse the district court’s decision and remand for further proceedings.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitation of Iowa R. App. P. 6.906(4) because:
 - This brief contains **2,653** words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).
2. This brief complies with the typeface requirements of Iowa R. App. P. 6.903(1)(e) and the type-style requirements of Iowa R. App. P. 6.903(1)(f) because:
 - This brief has been prepared in a proportionally spaced typeface using Microsoft Word 2010 in Georgia font, size 14.

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