IN THE IOWA DISTRICT COURT FOR POLK COUNTY

SIERRA CLUB IOWA CHAPTER, Plaintiff, vs. IOWA ADMINISTRATIVE RULES REVIEW COMMITTEE, and IOWA DEPARTMENT OF NATURAL RESOURCES, Defendants.	)	Court No. CE71093 MOTION FOR LEAVE TO FILE AN AMICUS BRIEF AND AMICUS BRIEF

FILED
POLK COUNTY, IA
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CLERK DISTRICT COURT

Comes Now, Terry E. Branstad, Governor of the State of Iowa, in support of the Defendants Motion to Dismiss, or in the alternative, Motion to Recast the Petition, and files this Motion for leave to file an Amicus Brief and Amicus Brief.[1] With the Court's permission, we request to file the following brief.

Amicus Brief

I. Background

Creating a job-friendly climate by reducing the regulatory burden on the citizens and Iowa's job-creating businesses is a strong priority of the Branstad-Reynolds' administration. In March 2012, the Sierra Club Iowa Chapter (Plaintiff) filed a Petition for Declaratory and Injunctive Relief. The Plaintiff alleged the statutory powers given to the Iowa Administrative Rules Review Committee (Rules Review Committee) violated the Iowa Constitution and consequently, the Iowa Department of Natural Resources (DNR) should be prohibited from

[1] *Martin v. Peoples Mut. Sav. & Loan Ass'n*, 319 N.W.2d 220, 230 (Iowa 1982) (acknowledging that an amicus brief was filed in district court); *see also Griffin Pipe Products Co. v. Bd. of Review*, 789 N.W.2d 769, 772 (Iowa 2010) (noting that three organizations filed "amicus briefs, which proved very helpful to the court in this case").

enforcing an action by the Rules Review Committee. The Plaintiff attacks the basic framework for oversight of administrative agencies, attacking the legislature's role in ensuring that regulations are reflective of legislative intent and not overly burdensome. The governor has a strong interest in maintaining legislative oversight of administrative regulation.

II. Jurisdiction

The Plaintiff's petition seeks declaratory and injunctive relief, asking the district court to declare the Rules Review Committee's action unconstitutional and prohibit the DNR from allowing mourning dove hunting with traditional lead shot. Yet, the Plaintiff acknowledged the proper procedure to challenge the DNR's action is through an agency action and subsequent judicial review of that action. Iowa Code § 17A.19 (2011) (stating that judicial review is the "exclusive means by which a person or party who is aggrieved or adversely affected by agency action" can challenge that action). The Plaintiff, however, fails to point to any administrative remedies it sought. Nor did the Plaintiff actually seek judicial review of an agency action pursuant to Iowa Code chapter 17A. As the Defendants assert in their Motion to Dismiss, the Plaintiff cannot challenge the agency action through a petition seeking declaratory or injunctive relief. Consequently, the district court does not have jurisdiction over the Plaintiff's action and should dismiss the suit. *See Cooper v. Kirkwood Cmty. Coll.*, 782 N.W.2d 160, 166 (Iowa Ct. App. 2010) (explaining that where a party does not comply with the requirements set forth in chapter 17A, the district court does not have jurisdiction over the case).

III. The Legislature and Governor's Role in Oversight of Administrative Rules

The Iowa Administrative Procedure Act (APA) sets out the process for agencies to make rules, and provides for oversight by the governor, legislature, and judiciary. Iowa Code ch. 17A; *see Iowa Fed'n of Labor, AFL-CIO v. Iowa Dep't of Job Serv.*, 427 N.W.2d 443, 447 (Iowa 1988) (explaining that the Iowa "statutory scheme relative to gubernatorial, legislative, and judicial review of agency rules" provides for each branch to exercise equally important and distinct roles in reviewing agency rules (citing A. E. Bonfield, *State Administration Rule Making*, §§ 8.4, 9.3, at 550-52, 586-88 (1986))).

All three branches of government play an important role in reviewing the rules made by administrative agencies. Gubernatorial and legislative review provides "a direct and effective check on unwise or unpopular agency rules" and judicial review ensures the legality of agency rules. Bonfield, *State Administrative Rule Making*, §8.1, at 456-57; *see also Iowa Fed'n of Labor, AFL-CIO*, 427 N.W.2d at 447. Unlike the governor and legislature, a bureaucracy is not elected by the citizens of the state. The governor and legislature are working together to reduce the regulatory burdens that impede job growth. The governor has an interest in maintaining this partnership as it furthers the administration's goal of creating an economic climate that supports job growth in Iowa. Further, the Governor respects the role of oversight by the legislative branch.

IV. The Governor Supports the Legislature's Administrative Rules Review Committee

The Administrative Rules Review Committee serves an essential oversight function. Under the Iowa Constitution and APA, the Rules Review Committee and the legislature as a whole have an important role to protect citizens from unnecessary and burdensome regulations.

Where an agency passes an unwise or overly burdensome rule, Iowa law does not require the legislature to pass a statute to overcome the rule. *Iowa Fed'n of Labor, AFL-CIO*, 427 N.W.2d at 446. In fact, the Iowa Constitution specifically grants the legislature the power to nullify an administrative rule by joint resolution. Iowa Const., Art. III, § 40 ("The general assembly may nullify an adopted administrative rule of a state agency by the passage of a resolution by a majority of all of the members of each house of the general assembly."). Such a nullification resolution must receive a constitutional majority in each house, but does not require signature by a Governor. *Id.* Iowa Code section 17A.8 sets out the powers of the Rules Review Committee and allows for the legislative review process to continue even when the legislature is not in session. One action the Rules Review Committee may take is to delay the effective date of an agency rule until the adjournment of the next regular session of the legislature, allowing for the legislature to convene and exercise its agency review power. Iowa Code § 17A.8(9). The Rules Review Committee is in a unique position to assess whether administrative rules and regulations are consistent with the statutes they purport to implement. The governor appreciates the Rules Review Committee's work throughout the year to protect citizens from overbroad and overreaching agency rules. Moreover, respect for the Constitutional powers and duties of all three branches of government, including checks and balances, best serves the interests of the citizens of Iowa.

V. Session Delay of NRC Rule Banning Traditional Shot

In 2011, legislation was enacted by the General Assembly to allow the hunting of mourning doves. 2011 Acts, Senate File 464. The legislation allowed the Natural Resource Commission to establish the hunting season for mourning doves. *Id.* When this legislation was

debated in the Iowa legislature, the House of Representatives defeated an amendment banning traditional lead shot by a vote of 51 nays to 30 ayes. 2011 Amendment H-1444, H.J. 779. The legislative action was clear. The ban on traditional lead shot was not part of the legislation allowing a mourning dove hunting season in Iowa. Despite the clear and unambiguous legislative action by the House of Representatives, the Natural Resource Commission, attempted to ban traditional shot by administrative rule. Volume XXXIV 3, ARC 9657B (August 10, 2011).

The legislative Administrative Rules Review Committee reviews administrative rules to provide legislative oversight and accountability. *See* Iowa Code § 17A.8(5)-(6) (2011). At the August 16, 2011 Administrative Rules Review Committee meeting, the Rules Review Committee reviewed the adopted rule at issue here. *See* Minutes of the August 2011 Meeting of the Administrative Rules Review Committee (August 16-17, 2011) available at: https://www.legis.iowa.gov/DOCS/LSA/ARR/ARRMinutes/2012/ANSAH003.PDF. At this meeting the Rules Review Committee utilized its statutory authority to delay this rule until the conclusion of the next regular session of the General Assembly, known as a "session delay." Iowa Code § 17A.8(9). The session delay, as utilized in this instance, ensured (1) that the legislature had the option to exercise its constitutional power to nullify a rule before it became effective on August 17, 2011; and (2) operated as a check on the bureaucracy to ensure that NRC dove hunting rules did not go beyond statutory authority to establish hunting season dates.

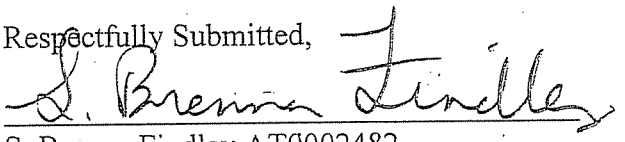
VI. Conclusion

With the Court's permission, we ask the Court consider this amicus brief. As an avid hunter who hunts with his sons, Governor Terry E. Branstad supports the power of the Administrative Rules Committee to delay the rule at-issue here. The Governor believes the

determination of whether hunters should be forced to stop using traditional lead shot is the role of the legislature, not an unelected NRC. The role of the legislature and the Administrative Rules Committee in the administrative rules process should be respected.

The partnership between the governor and legislature in reviewing proposed regulations is important to protect the citizens from overbroad and overreaching regulations. The legislature and the Administrative Rules Review Committee have an important role in ensuring that regulations do not reach beyond statutory authority. Respect for the Constitutional powers and duties of all three branches of government, including checks and balances, is essential to our legal framework. Moreover, it is important that administrative rules do not attempt to legislate or usurp the constitutional powers of the General Assembly, but rather to implement enacted legislation. Governor Branstad supports the Defendants' motion to dismiss.

Respectfully Submitted,



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