IN THE IOWA DISTRICT COURT FOR POLK COUNTY

BETTY ANN ODGAARD and RICHARD ODGAARD, **Plaintiffs,** **vs.** **IOWA CIVIL RIGHTS COMMISSION, ANGELA WILLIAMS, PATRICIA LIPSKI, MARY ANN SPICER, TOM CONLEY, DOUGLAS OELSCHLAEGER, LILY LIJUN HOU, and LAWRENCE CUNNINGHAM,** **Defendants.**	**Case No. CVCV046451** **RULING ON DEFENDANTS' MOTION TO DISMISS PLAINTIFFS' VERIFIED PETITION**

The Court held a contested hearing on this matter on January 31, 2014. Attorneys Frank Harty, Ryan Koopsman, and Eric Baxter appeared for Plaintiffs. Assistant Iowa Attorney General Katie Fiala appeared for Defendants.

Plaintiffs Betty Ann and Richard Odgaard filed their Verified Petition on October 7, 2013. Defendants Iowa Civil Rights Commission, Angela Williams, Patricia Lipski, Mary Ann Spicer, Tom Conley, Douglas Oelschlaeger, Lily Lijun Hou, and Lawrence Cunningham filed their Motion to Dismiss Plaintiffs' Verified Petition on October 30, 2013. The Plaintiffs filed their Resistance to Defendants' Motion to Dismiss on November 12, 2013. The Defendants filed their Reply to Resistance to Motion to Dismiss Plaintiffs' Verified Petition on November 18, 2013. Plaintiffs filed their Surreply in Resistance to Defendants' Motion to Dismiss on December 5, 2013 and a Supplemental Resistance to Defendants' Motion to Dismiss on February 5, 2014. The Defendants filed their Reply to Plaintiffs' Supplemental Resistance to Defendants' Motion to Dismiss on February 13, 2014.

Based upon a review the motion, resistances, replies to the resistances, briefs and court file, as well as considering the arguments of counsel, the Court enters the following Ruling:

RULING

Standard

In assessing a motion to dismiss, courts must "accept as true well-pleaded facts of the petition." *Gospel Assembly Church v. Iowa Dep't of Revenue,* 368 N.W.2d 158, 159 (Iowa 1985). However, when considering a motion to dismiss the court does not need to accept legal conclusions as true. *Monson v. Iowa Civil Rights Com'n*, 467 N.W.2d 230, 233 (Iowa 1991). Dismissal is permissible "only if [the court] can conclude that no set of facts is conceivable under which a plaintiff might show a right of recovery." *Smith v. Smith*, 513 N.W.2d 728, 730 (Iowa 1994). Courts "construe the petition in the light most favorable to the plaintiff" and resolve "all doubts…in the plaintiff's favor." *Id.* Where relevant facts are in dispute, the motion must usually be denied. *Pa. Life Ins. Co. v. Simoni,* 641 N.W.2d 807, 810 (Iowa 2002).

Findings of Fact

Plaintiff Betty Ann Odgaard is a Mennonite. (Verified Petition ¶ 19.) Plaintiff Richard Odgaard was baptized a Lutheran but has attended the Mennonite Church with his wife from the time they were married and considers himself a Mennonite. (Verified Petition ¶¶ 1 and 21.) Since 2002, Plaintiffs have run The Görtz Haus Gallery ("Gallery"), which is an art gallery in a former church building that they purchased to display and sell art. (Verified Petition ¶ 2.) The Plaintiffs host activities at the Gallery, such as a lunch bistro, a flower shop, a gift shop, and a framing shop. But the primary activity that they do is plan, facilitate, and host wedding ceremonies in the former sanctuary of the church building. (Verified Petition ¶ 3.) The Plaintiffs are intimately involved in the day-to-day operations of their business particularly the wedding ceremonies they host. (Verified Petition ¶ 50.)

On August 3, 2013, a same-sex couple ("the couple") from Des Moines requested that the Plaintiffs host their wedding ceremony at the Gallery. (Verified Petition ¶ 85.) The Plaintiffs declined the request because their religion forbids them from personally planning, facilitating or hosting wedding ceremonies not between one man and one woman. (Verified Petition ¶¶ 86, 87.) On August 4, 2013, the couple filed a complaint against the Plaintiffs with the Iowa Civil Rights Commission ("ICRC"). (Verified Petition ¶ 97.) The complaint alleged that the Plaintiffs discriminated against the couple based on the couple's sexual orientation. (Verified Petition ¶ 100.)

In the Verified Petition, the Plaintiffs say they currently have a reasonable expectation that the legal action filed against them will force them to either stop hosting weddings or violate their religious convictions. (Verified Petition ¶ 104.) Also in this Petition, the Plaintiffs say they are already experiencing a chill on their private religious speech and expressive conduct as the Plaintiffs want to make positive statements about the belief that marriage is a union between a man and woman on the Gallery's website, on the Gallery's Facebook page, and by means of the art in the Gallery; however, they fear that such statements may be deemed a violation of the Iowa Civil Rights Act ("ICRA"). (Verified Petition ¶¶ 106-107.)

The Plaintiffs filed their Verified Petition on October 7, 2013, which has 11 counts. Counts I and II claim that the ICRA cannot be interpreted or applied to find that the Plaintiffs have discriminated on the basis of sexual orientation by declining to plan, facilitate, or host a same-sex wedding ceremony because of sincerely held religious beliefs.

Counts III through VI and VIII through X are predicated on the assumption that the Plaintiffs will be forced to host a same-sex wedding ceremony or face government coercion. Under this assumption, the ICRA is alleged in Count III to prohibit the free exercise of religion

in violation of the Iowa Constitution, Article 1, § 3; in Count IV to punish the Plaintiffs for their religious beliefs in violation of the Iowa Constitution, Article I, § 4; in Count V to prevent the Plaintiffs from expressing their artistic and religious values in violation of the Iowa Constitution, Article I, § 7; in Count VI to compel Plaintiffs to host an expressive event which contradicts their religious beliefs in violation of the Iowa Constitution, Article I, § 7; in Count VIII to force the Plaintiffs to host same-sex weddings in violation of the Free Exercise Clause of the First Amendment of the United States Constitution; in Count IX to force them to plan, facilitate, sponsor, and host a ceremony that violates the Free Speech Clause of the First Amendment of the United States Constitution; and in Count X to force them to associate with and promote a message with which they disagree in violation of the Plaintiffs' right of expressive association secured to them by the First Amendment of the United States Constitution.

Counts VII and XI state that the Plaintiffs want to express their religious beliefs regarding marriage on the Gallery's website, Facebook page, and through appropriate artwork and scripture references on the walls of the sanctuary in the Gallery. However, they reasonably fear that the ICRA will interpret these views as advertising, indicating, or publicizing that they object to the patronage of some persons based on their sexual orientation. According to these counts, this fear chills their speech in violation of the Iowa Constitution, Article I and the Free Speech Clause of the First Amendment to the United States Constitution.

Analysis

The Court is mindful that in ruling on the Defendants' Motion to Dismiss, it must apply procedural rules to determine whether this Court has jurisdiction to address Plaintiffs' constitutional claims at this stage, or must first allow the ICRC to exercise its administrative

agency authority under the statutory scheme of the Iowa Administrative Procedure Act ("IAPA").

The Defendants make two main arguments for the dismissal of all counts. First, they contend the IAPA provides the exclusive means by which an aggrieved or adversely affected party may seek judicial review of agency action and the Plaintiffs have not exhausted these procedures. Second, Defendants argue that all of the claims in the Plaintiffs' counts are not ripe. The Plaintiffs argue that no administrative remedies need to be exhausted as they are not adequate, that forcing administrative exhaustion would cause irreparable harm, and that the claims are ripe. Because the Court decides in favor of the Defendants on all counts under the logic of their first argument, the Court will not discuss whether these claims are ripe.

I. Whether Exhaustion of Administrative Procedures is Required

In analyzing whether the Plaintiffs need to exhaust administrative procedures, the Court will divide the counts in the Verified Petition into three groups for purposes of organization. The first group, Counts I and II, consists of claims involving the adequacy of administrative remedies that the Plaintiffs may utilize to respond to the ICRC's actions. The second group, Counts III through VI and VIII through X, consists of constitutional challenges that are based on the assumption the ICRA will be interpreted by the ICRC in a way that is adverse to the Plaintiffs and force the Plaintiffs to change their current operation of the Gallery. Finally, the third group, Count VII and XI, consists of anticipatory constitutional challenges, which are based on the same interpretative assumption and that this interpretation will negatively affect the Plaintiffs' future plans for the Gallery.

Iowa's three branches of government are established by the Iowa Constitution. As society became more complex, the Iowa legislature, as did the federal government, established within

the executive branch various agencies to implement the laws passed by the legislative branch. One of these agencies is the Iowa Civil Rights Commission. *See* Iowa Code chapter 216. However, to fulfill due process in matters addressed by the agency, it was determined that the executive branch agency could not have the final say. A citizen or party aggrieved by an agency decision is entitled to appeal the decision to the third branch, the court – this is called "judicial review." The Iowa legislature enacted the IAPA, Iowa Code chapter 17A, that provides the procedures for the appeal process from an executive agency decision to the district court.

Defendants contend that Plaintiffs' current Verified Petition does not follow this process and should therefore be dismissed. Plaintiffs claim their Verified Petition falls within certain recognized exceptions to the process and therefore should be allowed to proceed. Applying the law, this Court must decide which position is correct. Thus, the issue for the Court here is not the conflict of religious freedom versus same-sex marriage, but rather, whether the Plaintiffs' filing of their Verified Petition in district court, before the ICRC looks into the complaint that has been filed, is procedurally permitted.

a. Whether Count I and II Should Be Dismissed Because Administrative Remedies Were Not Exhausted?

Agency action is defined, in part, as "the performance of any agency duty or the failure to do so." Iowa Code § 17A.2. The IAPA provides the exclusive means by which an aggrieved or adversely affected party may seek judicial review of agency action. Iowa Code § 17A.19. "The act's procedures must be adhered to in order for the district court to obtain jurisdiction." *Tindal v. Norman,* 427 N.W.2d 871, 872 (Iowa 1988). One reason behind this requirement is to promote orderly procedures within the judicial system. *Charles Gabus Ford, Inc. v. Iowa State Highway Commission*, 224 N.W.2d 639, 648 (Iowa 1974).

The requirement to follow the act's procedures before the district court may obtain jurisdiction is not absolute. *Salsbury Labs. v. Iowa Dep't of Environmental Quality*, 276 N.W.2d 830, 836 (Iowa 1979)(citation omitted). If an agency is "incapable of granting the relief sought during the subsequent administrative proceedings, a fruitless pursuit of these remedies is not required." *Id*. However, to bypass the requirement a party needs more than a "bare assertion that an agency is predisposed to reach a certain conclusion" as the "futility exception is concerned with the adequacy of the remedy, not a perceived predisposition of the decisionmaker [sic]." *City of Iowa City v. Hagen Electronics, Inc.,* 545 N.W.2d 530, 535 (Iowa 1996); *Christensen v. Iowa Civil Rights Commission,* 292 N.W.2d 429, 431 (Iowa 1980)("a claim of bias is insufficient to avoid an exhaustion requirement").

The Defendants argue that Counts I and II challenge the ICRC's performance of a statutory duty, which means these counts are directed at "agency action." Therefore, the Defendants maintain that the Plaintiffs must follow the exclusive means provided by the IAPA to seek judicial review and bring this claims in front of the ICRC. The Defendants further contend that the ICRC can provide an adequate remedy.

The Plaintiffs argue there is no adequate administrative remedy available to them. The Plaintiffs contend that the ICRC has already construed the ICRA to prohibit places of public accommodation from declining to host a same-sex wedding ceremony, regardless of any religious prohibitions. The Plaintiffs make these allegations in their Verified Petition in paragraph nine[1] which says the ICRC "is now seeking to force the Odgaards to plan, facilitate, and host same-sex wedding ceremonies at the Gallery" and paragraphs 104 to 105 which state:

[1] "9.The Iowa Civil Rights Commission ("ICRC") is now seeking to force the Odgaards to plan, facilitate, and host same-sex wedding ceremonies at the Gallery."

> 104. [t]he Odgaards currently have a reasonable expectation that the legal action filed against them will force them to either stop hosting weddings or violate their religious convictions.
>
> 105. On information and belief, the Iowa Civil Rights Commission interprets the sexual orientation non-discrimination law to ban their religious decision not to host same-sex wedding ceremonies

The Court agrees that Counts I and II challenge the ICRC's performance of a statutory duty as the ICRC is an agency and exercising its statutory power "to determine the merits of complaints alleging unfair or discriminatory practices" by interpreting and applying the ICRA. Iowa Code § 216.5(2). See *Renda v. Iowa Civil Rights Comm'n*, 784 N.W.2d 8, 10 (Iowa 2010) (referring to the Commission as an administrative agency). The Court further finds that the Plaintiffs need to exhaust administrative remedies and procedures before the Court is able to exercise jurisdiction over the counts they allege in their Verified Petition.

The Plaintiffs rely on the declarations of Richard Odgaard and Eric Baxter and their attached exhibits to support their position that the ICRC has predetermined this issue and it would be fruitless to require exhaustion of the administrative agency process. The Court has reviewed these.[2] The Plaintiffs submit the ICRC's Screening Data Analysis and Case Recommendation (SDA&CR)[3] issued on January 31, 2014, in support of their position that the ICRC has already made a decision adverse to the Odgaards. This SDA&CR causes some concern. First, the Respondent before the ICRC is identified as Görtz Haus Gallery, Inc., (emphasis added) and not Richard and Betty Ann Odgaard as individuals, who are the Plaintiffs in this district court action. A reading of the SDA&CR focuses solely on whether this

[2] Plaintiffs submit a Declaration of Richard Odgaard and his correspondence with the ICRC as well as a letter from Odgaards' state representative to the ICRC on their behalf inquiring as to the ICRC's position whether declination by their *business* to accommodate same-sex weddings would be considered a violation of the ICRA. The letter from the state representative and the ICRC's response do not raise or address the possible impact of Odgaards' religious beliefs regarding same-sex marriage and their constitutional right of individual free exercise of religion. Thus, the latter correspondence cannot be considered as evidence of the ICRC's pre-disposition toward finding in favor of the presently pending complaint before the ICRC since they did not address the First Amendment issue.

[3] Exhibit 8 of Eric Baxter's Declaration filed on February 5, 2014.

Respondent as a "public accommodation" as defined in Iowa Code §216.2(13)(a), would be exempted from the ICRA as meeting the definition of a "bona fide religious organization." At page 7 of the SDA&CR, the ICRC concludes:

> Here, it is unlikely that Respondent meets the definition of a "bona fide religious organization," exempting it from the provisions of Iowa Code §216.7. The sincerity of the religious beliefs of the Odgaards is not in doubt. But, as in *Townley*, the belief of the owners and operator of Respondent are not enough in themselves to make Respondent "religious" within the meaning of Iowa Code §216.7.

On page one of the SDA&CR, the ICRC states: "Respondent states that it is an unincorporated entity owned and operated by Richard and Betty Ann Odgaard." (Emphasis added). The Court is aware that Iowa Code §216.7(1) proscribes discriminatory practice of any public accommodations to include any "owner, lessee, sublessee, proprietor, manager, or superintendent,…" Even so, the ICRC in its SDA&CR does not address whether the Odgaards, as individuals, have any federal Constitution First Amendment religious rights, or Iowa Constitutional religious rights under Art. I, sec.3, which may provide them constitutional protection from ICRC action beyond the statutory analysis the ICRC applied.[4] It is this constitutional protection that they raise in the district court action.

Although the Court has concern that the ICRC may be misdirected when considering the Respondent as a corporation, and that the ICRC has not focused on the Odgaards' individual claim of federal and state constitutional religious freedom rights that may trump discrimination statutes, the Court is mindful that since the Iowa *Varnum*[5] decision in 2009, and similar issues involving same-sex marriages around the country, state and federal agencies and courts have

[4] As found in Varnum v. Brien, 763 N.W.2d 862 (Iowa 2009): "A statute inconsistent with the Iowa Constitution must be declared void, even though it may be supported by strong and deep-seated traditional beliefs and popular opinion." The same would be true if a provision of the Iowa Civil Rights Act was found to be in conflict with a person's constitutional right regarding religion, even if contrary to popular opinion.

[5] Varnum v. Brien, 763 N.W.2d 862 (Iowa 2009).

been faced with determining and balancing conflicting constitutional religious and non-discriminatory rights. While this motion has been pending, a similar issue involving owners of a business challenging the Affordable Care Act (ACA) based upon First Amendment freedom of religion legal principles was argued before the United States Supreme Court on March 25, 2014, in the cases of *Hobby Lobby v. Sebelius* (13-354) and *Conestoga Wood Specialties Corp. v. Sebelius* (13-356). The opinions in those cases may well impact the substantive legal contentions of the parties in the case at bar. As this area of the law is developing, it would be inappropriate to presume that the ICRC will not address such an issue because it has pre-ordained a decision in regard to the Odgaards.

The Court finds Plaintiffs' argument that the exhaustion of the administrative procedure is futile unconvincing as the futility exception is not concerned with the perceived predisposition of the decision maker but rather the adequacy of the remedy. Consequently, the large amount of evidence that the Plaintiffs offered, which includes the petition, e-mails of the ICRC concerning civil rights legislation, and relevant correspondence from the attorney general's web team, that shows that the ICRC is predisposed to rule against them is not relevant to the futility analysis. The agency is capable of granting the relief the Plaintiffs seek as they can interpret and apply the statute to find that the Plaintiffs did not discriminate. *See* Iowa Code § 216.15.

b. Whether Count III through VI and VIII through X Should Be Dismissed Because Administrative Remedies Were Not Exhausted?

The test for whether a constitutional challenge first needs to exhaust administrative remedies depends on whether there is a matter pending before an agency, which can moot the constitutional issue. This rule was described in *Alberhasky v. City of Iowa City,* 433 N.W.2d 693, 695 (Iowa 1988)(quotation omitted):

> [i]n administrative law cases generally there is some lingering confusion as to whether exhaustion will be required when the constitutionality of a statute is challenged on its face rather than as applied. However, the emerging rule would appear to be that since the administrative remedy cannot resolve a constitutional challenge, exhaustion will not be required unless the administrative action might make judicial determination of the constitutional question unnecessary.

See also Shell Oil Co. v. Bair, 417 N.W.2d 425, 429 (Iowa 1987) (the Iowa Supreme Court held that "where the constitutional issue sought to be raised directly affects a matter pending before an agency, administrative exhaustion should ordinarily precede a judicial inquiry into the statute's validity"); *Salsbury Laboratories v. Iowa Dept. of Environmental Quality,* 276 N.W.2d 830, 836 (Iowa 1979)(the Iowa Supreme Court held that unless it is the only issue raised, a facial constitutional challenge must exhaust administrative remedies where the constitutional challenge "may be mooted by a favorable agency adjudication of fact or law").

The policy behind requiring administrative exhaustion if a matter pending before the agency can moot the constitutional issue is threefold. The first reason behind this ruling is that "permitting the administrative process to first run its course may eliminate the need for reaching potential constitutional claims." *Shell Oil Co.,* 417 N.W.2d at 430 (citation omitted). The second reason is that constitutional issues, even those considering facial challenges, are more effectively presented for adjudication based upon a specific factual record. *Id.* at 430. The last reason for this rule is it is more efficient as "it can be expected that facial constitutional challenges will be coupled with claims that the legislation is unconstitutional as applied to the litigant." *Id.* at 430.

The parties argue whether these counts are "as applied" or "facial." The Court finds that such a determination is unnecessary to the analysis of whether administrative exhaustion is required.

More relevant to the analysis is Defendants' stance regarding the effect the ICRC's decision on the matter involving the Plaintiffs' wedding services will have on the constitutional

claims. The Defendants argue that it is possible the ICRC's decision regarding matters of statutory construction and application might render a judicial determination of its constitutional questions unnecessary. The Plaintiffs argue that the claims in Counts III through VI and VIII through X are not affected by the matter pending before the ICRC.

The Court finds that the matter before the ICRC dealing with the Plaintiffs' marriage services directly affects Counts III through VI and VIII through X. If the ICRC interprets the statute in a manner which does not require the Plaintiffs to host same-sex marriages then the Plaintiffs constitutional claims are mooted as all these claims are predicated on the ICRC interpreting the ICRA in a manner that will force the Plaintiffs to host same-sex marriages.

c. Whether Counts VII and XI Should Be Dismissed Because Administrative Remedies Were Not Exhausted?

Wholly anticipatory constitutional claims do not need to be initiated in front of the affected agency. *Shell Oil Co. v. Bair,* 417 N.W.2d at 429 (citation omitted). The Supreme Court of Iowa in *Tindal,* 427 N.W.2d at 874, found that this exception to administrative exhaustion applied to an action challenging the constitutionality of an enabling statute when there was no matter pending before an agency making it wholly anticipatory.

The Defendants argued against considering Count XI under this exception as it is against the policy articulated in *Shell Oil* that "facial constitutional challenges will probably be coupled with claims that the legislation is unconstitutional as applied to the litigant." The Defendants further say that the Plaintiffs' Count XI needs a more developed record before being considered as the Court needs to know how the ICRC interprets the ICRA before proceeding.

The Plaintiffs argue that Count XI falls well within the established exception for waiving exhaustion. The Plaintiffs contend that the facts are as plead, the ICRC raised no disputes to these facts, and the facts do not need to be further developed. Last, the Plaintiffs argue against

the efficiency argument as "the First Amendment does not permit the State to sacrifice speech for efficiency." *Riley v. Nat'l Fed'n of the Blind of N.C.,* 487 U.S. 781, 795 (1988).

The Plaintiffs and Defendants do not argue that Count VII should or should not have to utilize administrative remedies because of its anticipatory nature. Rather, they group Count VII with Counts III through X. The Court finds that Count VII is more appropriately grouped with Count XI and consequently, will address them together.

The Court finds that while these counts do have anticipatory elements as the Plaintiffs plans to publish their beliefs are forward looking, the Court finds that these counts will be potentially resolved when the ICRC considers the matter: if the ICRC decides that the Plaintiffs legally can refuse to host same sex marriages, it follows that they can legally advertise this practice and their reasoning for it. In making this decision the Court is guided by the policy of the doctrine of avoidance.

II. Whether Requiring Exhaustion Will Irreparably Harm the Plaintiffs

Any "litigant who would suffer irreparable harm from administrative litigation delay may proceed to court without exhausting administrative remedies." *Salsbury Labs.*, 276 N.W.2d at 836. This is because "an adequate showing of irreparable injury…would make judicial review of final agency action an inadequate remedy for purposes of section 17A.19(1)." *Id.* It is well established that the "loss of First Amendment freedoms, for even minimal periods of time unquestionably constitutes irreparable injury." *Johnson v. Minneapolis Park & Recreation Bd.,* 729 F.3d 1094, 1101-02 (8th. Cir. 2013).

In *Ohio Civil Rights Commission v. Dayton Christian School*s, Inc., 477 U.S. 619 (1986), the United States Supreme Court considered whether a religious school could enjoin an administrative agency from asserting jurisdiction over it and investigating a claim of sex

discrimination on First Amendment grounds. In this case, the defendant, a religious school, put a provision in its teachers' contracts to forbid teachers from bringing a Christian to court; this provision was an attempt by the defendant to further its belief that no Christian should bring another Christian to court. The defendant discharged a teacher because she threatened to sue the school in court. Subsequently, the Ohio Civil Rights Commission investigated the school as they found that there was probable cause that the school discharged the teacher for discriminatory and retaliatory reasons. The defendant religious school said that the investigation of this discharge violated its First Amendment religious rights. The Supreme Court held that no constitutional rights were violated by merely investigating the circumstances of the discharge.

The Plaintiffs claim that the ICRC's interpretation of the ICRA is placing substantial pressure on them to abandon their religious convictions and freedom of speech as they are concerned about being penalized if they decline to plan, host, or facilitate same-sex wedding ceremonies or speak about their religious beliefs concerning same-sex weddings. They further believe irreparable injury exists as the pre-hearing procedures are intimidating and intrusive.

The Court finds that the Plaintiffs will not suffer irreparable injury because of the intimidating nature of the pre-hearing procedures. To allow Plaintiffs to avoid administrative investigation just because they found the process intrusive would allow any plaintiff to avoid exhausting administrative remedies and make the agency procedures elective.

The Court finds that the Plaintiffs will not suffer irreparable injury as their First Amendment rights are not being violated. The Court is aware that the alleged violation of the First Amendment in *Ohio Civil Rights Commission* is distinguishable from the case *sub judice: Ohio Civil Rights Commission* was concerned about the investigation of an act that already occurred while this case involves a concern that the threat of punishment by the ICRC will

prevent the Plaintiffs from exercising their First Amendment rights in the future. However, the Court finds it logical that if the Supreme Court of the United States found it constitutional to investigate a past allegedly discriminatory act involving religious beliefs, it would not stop the investigation because the school wanted to continue to practice the allegedly discriminatory act. Put another way, if it is constitutional to investigate an allegedly discriminatory act, it stands to reason that the chill that the investigation will have on performing that same allegedly discriminatory act does not make the investigation unconstitutional.

The Court further finds that the Iowa Supreme Court would rule in a similar manner, as it has consistently allowed administrative agencies to hear matters which involve constitutional claims if the agency could possibly moot the constitutional claims by deciding the matter on non-constitutional grounds. If the Court held that any investigation of a matter which involved constitutional issues violated the individual's constitutional rights or irreparably harmed the individual, the Court would be nullifying the Supreme Court's holdings in such cases. Therefore, the Plaintiffs argument of irreparable injury fails.

Conclusion

Because the Court concludes that the Plaintiffs' claims must first be heard and their administrative remedies exhausted before the ICRC, this Court does not presently have jurisdiction to address the Plaintiffs' Verified Petition and it must be dismissed without prejudice.

ORDER

IT IS THEREFORE ORDERED that the Defendants' Motion to Dismiss Plaintiffs' Verified Petition is GRANTED. Plaintiffs' Verified Petition is DISMISSED WITHOUT PREJUDICE.

State of Iowa Courts

Type: OTHER ORDER

Case Number	**Case Title**
CVCV046451	BETTY ANN ODGAARD AND RICHARD ODGAARD V. ICRC

So Ordered

Richard G. Blane II, District Court Judge,
Fifth Judicial District of Iowa