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A Declaration of Dependence for Iowa Civil Rights Committees

Michael Mahoney

A DECLARATION OF DEPENDENCE

FOR IOWA CIVIL RIGHTS COMMITTEES

By Michael Mahoney

What does independent mean to you? In *Bribriesco-Ledger v. Klipsch*, Iowa's Supreme Court gave a surprising answer to Iowa's city civil rights commissions. Where one may be inclined to see independent commissions as insulated from both the political process and elected officials in turn, the Court saw independence as window-dressing. In overturning the trial court, Iowa's highest court declared that civil rights commissioners are removable by the elected officials they are supposed to hold accountable.

In this case, the mayor of Davenport, Iowa, fired Nicole Bribriesco-Ledger and three other commissioners shortly after learning that those commissioners discussed taking legal action against the city. Bribriesco-Ledger asserted that members of a city's civil rights commission could only be fired for cause, while the mayor claimed the commissioners served at the leisure of the executive and could be terminated at-will. The trial court agreed with Bribriesco-Ledger, as it was persuaded that part of what makes a commission "independent" is the members' employee status. The lower court held that the mayor, Frank Klipsch, only had the authority to remove committee members for cause. Therefore, because Bribriesco-Ledger was not fired for cause, her removal was unlawful.

On appeal, the Iowa Supreme Court reduced the fact pattern above to this sentence: "This appeal requires us to answer whether Davenport's mayor may remove an appointee from the Davenport Civil Rights Commission without cause." Immediately, the omission of relevant facts raises concerns about the Court's intent. The facts of this case are egregious, and they illustrate the type of situation from which an "independent" committee should be exempt. The Court spent no time on these facts, the implications of these facts or the way in which the law would be expected to interact with these facts. Ignoring the facts of a case is a poor way to deal with any ambiguity that arises in that case, as it allows a court to analyze the law in isolation, narrowing or broadening the scope of the words to achieve a desired outcome.

In reversing the trial court, the Iowa Supreme Court claimed that its interpretation of the law was the truest to the text of the 1990 Iowa Acts law. That law created civil rights committees in each city with a population over 29,000. Notably, the Court repeatedly cited former Supreme Court Justice Antonin Scalia's book, *Reading Law*, in conjunction with case law from the early 20th century as it declined to apply the first definition of "independent agency" from Black's Law Dictionary, a frequently updated publication of the 21st century. The Court finds this definition to be too broad for the purposes of this law. Truth to the letter of the law is one matter, but truth to the spirit of the law is another. The Court asserted that the letter of Iowa law properly reflected the intended interaction of municipal law and civil rights commissions. The majority omitted almost any evaluation of supporting case law for her position, from Iowa or elsewhere. The closest the Court came to analyzing the merits of Bribriesco-Ledger's argument is to dismiss her assertion that members of "independent" committees may only be removed for cause. The Court employed whataboutism, citing the Iowa Code's provision that the independent commission has control over staff. The Court claimed no commission would have to specify this control if that commission was independent in the manner Bribriesco-Ledger asserted, so "independent" must not mean what Bribriesco-Ledger asserted. The Court applied a maxim of textual interpretation: inclusion of one term is an exclusion of all others. This is a maxim generally applied to lists, but here the Court applied it to portray a clarification as a contradiction.

Problematically, the Court neglected to mention that the mayor basically fired these members to preempt legal action. The Supreme Court ripped all context from this decision and insulated the law from the facts, then gave the law a brittle, textual skin. Proponents of this type of interpretation claim it is a principled approach to give certainty to legal outcomes. Here, the Court offers the panacea of more certain outcomes at the cost of context, willfully ignoring the negative externalities—chiefly the municipal authority being unaccountable to civil rights committee actions—caused by its decision. "The law is what it says," and one needs to look no further at the ramifications.

Those ramifications of the Court's decision will be felt most by citizens of Iowa's larger communities who cannot afford legal representation. Iowans who can afford representation can sue the city directly for civil rights violations, but this decision renders the civil rights committee toothless by de facto removing the commission's power to bring a lawsuit. As with the facts in this case, all a mayor or similar municipal

authority must do is fire the members of the civil rights committee that are planning to sue. They can then replace appointees at will, likely under the condition they do not pursue legal action against the city. If the new appointee defects, the municipal authority fires him or her, and the cycle begins anew. Ultimately, this power grants municipalities immunity from these civil rights committees. This is the context that the *Bribriesco-Ledger* court failed to consider in the majority opinion.

Judge Appel captured the urgency of this matter in his *Bribriesco-Ledger* dissent. His dissent contained the only full recounting of the facts from the trial court. He noted the dissociation of "independent" from its understood legal meaning by his colleagues and explained why their reasoning did not square with the history, intent or language of the statute the majority analyzed.

Judge Appel's deep dive into the history of Iowa civil rights legislation is both illuminating for the reader and embarrassing for the majority. Where the majority applied a selective sort of textual argument, picking and choosing which statutes to analyze in concert with less frequently used definitions of "independent," Judge Appel wrote a dissertation. He expertly cut through the veil of textualism to the matter at hand: These civil rights committees cannot function in claims against their own city if their members can be fired at will by the city's elected officials. The mayor's firings in anticipation of litigation were flagrant, and Judge Appel refused to allow his conduct to be cloaked as a mere "firing without cause" to an uninitiated reader.

Judge Appel noted that *Bribriesco-Ledger* is just one step further down the road for the court regarding municipal authority over "independent" committees. He cited multiple recent decisions showcasing this erosion, and the repercussions are summarized succinctly in his conclusion:

After today, unless there is a provision in the local ordinance protecting the "independence" of the commission,[1] a sincere local commission might consider disclosing to citizens in a candid brochure or other publication that it only has the resources to bring a handful of cases, that a [right-to-sue] letter is not available for violations of the local ordinance and that if the commission is considering bringing an action against the city itself, or another politically connected entity, the mayor can fire the commissioners to stop it.[2]

Judge Appel dodged at least one inconvenient decision in *Seila Law LLC,* however: In that case, the Supreme Court ruled that the president has the authority to remove the head of the Consumer Financial Protection Bureau ("CFPB"), an "independent" agency, because the agency was led by one director instead of multiple commissioners. The Court claimed this organizational structure was incongruous with the Constitution and permitted the CFPB's head to be fired. *Seila Law* was decided in 2020, so this case is representative of the Court's current disposition on independent agencies.

While Judge Appel correctly noted that *Seila Law* did not overturn *Humphrey's Executor*, the first Supreme Court case to recognize that heads of independent agencies can only be fired for cause, *Seila Law* limited the scope of protection for independent agencies. He also noted that *Morrison,* which held that "inferior executive agents" without rule making authority can be terminated on a for-cause basis, is closer to Bribriesco-Ledger's position than the single director of the CFPB in *Seila Law.* Despite these caveats, *Seila Law* has undoubtedly eroded some long-standing federal precedents of independent agencies, and the Supreme Court may be amenable to further erosion when the opportunity presents itself.[3] At least Justices Thomas and Gorsuch were prepared to overturn *Humphrey's Executor* in *Seila Law,* and while it is unknown if Justice Coney Barrett would side with them, there is at least a pathway to a total overturn of *Humphrey's Executor*, eliminating the concept of independent agencies in Federal law. Thus, the Iowa Supreme Court's majority opinion in *Bribriesco-Ledger* reflects the trend in federal law, and it is not a trend that favors Judge Appel's dissent, no matter how well-reasoned, precise, and rooted in fact and precedent it is.

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These trends away from independent commissions in Iowa and elsewhere will lead to more legal challenges for existing commissions, agencies, and otherwise. As seen here, an official like Mayor Klipsch may act egregiously in the face of legal action from an independent commission, and now there is no recourse for that official in the legal system. Sure, that official probably loses re-election. So what? The next person in the role will have the same free reign to avoid consequences as the last one.

In conclusion, independent agencies are viewed as blasphemy to constitutional originalists who see these agencies as an illegitimate fourth branch of government. This theory has become more popular in recent years, and it is all too easily expanded to municipalities. Municipal agents wield similar power to other executives over a smaller jurisdiction, enabling them to act swiftly and respond to the citizenry. Allowing mayors or similar units of municipal government to oust the commission preparing to sue them is a declaration of dependence, and that voice joins the growing chorus. States will see their independent agencies challenged in conjunction with the national trend, and these agencies will continue to be bent by jurists who see them as illegitimate until they finally break. That break must be done through individual challenges in each state, but a formal overturning of *Humphrey's Executor* may open the floodgates. For those who have pushed to see these agencies brought back under the clear control of the executive branch, Iowa's decision in *Bribriesco-Ledger* is a sweet victory. For those who may face discrimination in the future and find their complaints go unanswered by an agency that is no longer able to help them find justice, this so-called victory is unpalatable.

1. *Bribriesco-Ledger v. Klipsch*, 957 N.W.2d 646 (Iowa 2021).
2. *Bribriesco-Ledger v. Klipsch*, 957 N.W.2d 646, 668-69 (Iowa 2021).
3. *Seila Law LLC v. CFPB,* 140 S. Ct. 2183, 2211 (2020) *(Thomas, J. and Gorsuch, J. Concurring in Part and Dissenting in Part).*

ERRATA

Michael Mahoney is the author of *A Declaration of Dependence for Iowa Civil Rights Committees* (pg.50). Makela Hayford was erroneously listed as the author.