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IN THE SUPREME COURT FOR THE STATE OF IOWA  
No. 21-0981

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**TOMMY MARION COPELAND,**  
Plaintiff/Appellant,

vs.

**STATE OF IOWA and IOWA AIR NATIONAL GUARD,**  
Defendants/Appellees.

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Appeal from the Iowa District Court for Polk County,  
Honorable Paul D. Scott

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Plaintiff/Appellant's Final Reply Brief

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**CERTIFICATE OF FILING AND SERVICE**

I hereby certify e-filing of the Plaintiff/Appellant's Final Reply Brief via EDMS with the Appellate Court on January 19, 2022, with the following counsel served by EDMS:

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I certify on January 19, 2022, the Plaintiff/Appellant's Final Reply Brief was served on Appellant Tommy Copeland.

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## ARGUMENT

### **I. COPELAND DID NOT HOLD A CONFIDENTIAL RELATIONSHIP WITH THE ADJUTANT GENERAL.**

The term “confidential relation” is not defined within Chapter 35C, nor anywhere else within the Iowa Code. In *Allen v. Wegman*, the very broad interpretation of “strictly confidential relationship” was derived from an Indiana intermediate appellate court interpreting a private contract and not a highly remedial statutory scheme. 254 N.W. 74, 79-80 (Iowa 1934) (citing *Scott v. Brown*, 157 N.E. 64 (Ind. App. 1927)).

*Wegman* and the cases which followed, fail to take into account the plain meaning of “confidential relation.” See *Miller v. Westfield Ins. Co.*, 606 N.W.2d 301, 301 (Iowa 2000) (“[w]e assume the legislature intends the words it uses in a statute to be given their common and ordinary meaning when the words are not otherwise defined by the legislature.”) (citing *George H. Wentz, Inc. v. Sabasta*, 337 N.W.2d 495, 500 (Iowa 1983)). *Wegman* was decided almost ninety years ago in 1934. 254 N.W. 74.

Confidential relation is defined in the 1933 Black's Law Dictionary as follows:

A fiduciary relation. These phrases are used as convertible terms. It is a peculiar relation which exists between client and attorney, principal and agent, principal and surety, landlord and tenant, parent and child, guardian and ward, ancestor and heir, husband and wife, trustee and *cestui que trust*, executors or administrators and creditors, legatees or distributees, appointer and appointee under powers, and partners and part owners. In these and like cases, the law, in order to prevent undue advantage from the unlimited confidence or sense of duty which the relation naturally creates, requires the utmost degree of good faith in all transactions between the parties.

Black's Law Dictionary 394 (3rd ed. 1933). Therefore, a confidential relation requires a direct relationship between the two parties which creates fiduciary duties and obligations, which are not present between Copeland and the Adjutant General.

Here, the State's analysis of "confidential relationship" would imply every employee of the Iowa Air National Guard holds a confidential relationship with the Adjutant General and therefore cannot be protected by Iowa's Veteran's Preference statute. The Adjutant General is in charge of all aspects of the Iowa Air National Guard and delegates those tasks

to other individuals, such as a Security Forces Manager, who *then* delegates even further down the chain to individuals, like Copeland, who are Security Guards. (App. 62.) That does not mean Copeland holds any confidential relationship directly with the Adjutant General, and therefore, he is entitled to protections under Iowa Code Chapter 35C.

Copeland is similar to the veteran in *Ervin v. Triplett*, in which the Iowa Supreme Court found there was not a confidential relationship. 18 N.W.2d 599 (Iowa 1945) (overruled on other grounds). In *Ervin*, the Court found although the “work of a detective may be of a confidential nature and his reports may be confidential to his immediate supervisor” it does not in any way mean the position of detective is “one of ‘strictly confidential relation to the appointing officer’” which would be the commissioner of public safety. *Id.* at 601-02.

This was furthered in *Andreano v. Gunter*, where the Court outlined “there is a broad difference between such an officer and an assistant chief of police who has the power and is charged with the duties

defined by the Des Moines ordinances for that office.” 100 N.W.2d 649, 656 (Iowa 1961).

Similarly, Copeland may have a confidential relationship with his direct supervisor, the Security Forces Manager, Copeland does not have one with the appointing authority, the Adjutant General. (App. 62.). The fact that Copeland’s supervisor may have a confidential relationship with the Adjutant General, does not mean Copeland himself has a confidential relationship with the Adjutant General. This theory would mean every employee of the Iowa Air National Guard has a confidential relationship because their supervisors have the relationship.

The States cites *Machamer v. Iowa Department of Administrative Services*, where the Iowa Court of Appeals found there was a confidential relationship, but this case is not similar to Copeland at all. 2016 WL 7395731, No. 15-1861 (Iowa Ct. App. 2016). In *Machamer*, the plaintiff was found to hold a confidential relationship with the appointing authority as Chief of the Organizational Performance Bureau for the Human Resource Enterprise of the Department of Administrative



Services. *Id.* at \*3. This relationship was found because Machamer “lead the bureau team in developing and executing program goals and objectives consistent with the strategy and vision of the Human Resources Enterprise,” oversaw and participated in personnel investigations, and, among other leadership tasks, was responsible for supervising over twenty people and managing a substantial budget. *Id.* Further, Machamer had previously been notified he was a confidential employee and not covered by the protections of Iowa Code section 35C.8. *Id.* at \*4.

There are no such facts in the record that would support the claim Copeland was in such a similar position of power and influence within his position. Copeland did not have any leadership or management responsibilities which the Adjutant General entrusted in him. Any assignments came from the Security Forces Manager, his direct supervisor. (App. 62.)

Under *Machamer*, the court is to look at whether the person was “necessarily given considerable latitude and required to exercise his

discretion and good judgment in dealing with many of the duties *delegated to him.*” 895 N.W.2d at \*2 (emphasis added). The district court also finds, in following the *Machamer* analysis, that Copeland was required to “exercise discretion and good judgment” and his job required “skill, judgment, trust, and confidence.” (Ruling p.9; *Machamer*, 895 N.W.2d at \*2.) This is true for the specific duties which Copeland was assigned. (App. 62.) Because neither the Adjutant General nor Assistant Adjutant General delegated duties to Copeland, however, that analysis is unnecessary. Copeland was not a confidential employee. There are essentially three (3) steps of separation between Copeland and the Adjutant General. (App. 62-65.) This is not enough for a confidential relationship.

### **CONCLUSION**

For the reasons set out herein, this Court must reverse the dismissal of Copeland’s Writ of Certiorari and direct the State of Iowa/ Iowa Air National Guard to reinstate Copeland with full back pay and benefits from August 1, 2020, until his reinstatement.

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**CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME  
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This brief complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(g)(1) (no more than 14,000 words) because this brief contains 1,081 words, excluding the parts of the brief exempted by Rule 6.903(1)(g)(1), which are the table of contents, table of authorities, and certificates.

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 for Office 365 MSO in font size 14, Century Schoolbook.

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Date: January 19, 2022