IN THE SUPREME COURT OF IOWA

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SUPREME COURT NO. 17-1592
UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF IOWA, CENTRAL DIVISION
CASE NO. C 15-3168-MWB

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GREGORY BALDWIN,
Plaintiff-Appellee

vs.

CITY OF ESTHERVILLE, IOWA, MATT REINEKE, Individually and in his Official Capacity as an Officer of the Estherville Police Department, and MATT HELLICKSON, Individually and in his Official Capacity as an Officer of the Estherville Police Department,
Defendants-Appellants.

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*CERTIFIED QUESTION FROM THE HONORABLE MARK W. BENNETT*

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# BRIEF OF AMICUS CURIAE – IOWA ASSOCIATION FOR JUSTICE

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## IDENTIFICATION OF *AMICUS CURIAE* AND STATEMENT OF INTEREST

The Iowa Association for Justice ("IAJ") submits this *Amicus Curiae* Brief to assist the Court in resolving the issue of whether governmental actors are entitled to qualified immunity for violating an individual's rights guaranteed by the Iowa Constitution. IAJ's stated objective is "to uphold and defend the Constitutions of the United States and of the State of Iowa; to advance the science of jurisprudence; to train in all fields and phases of advocacy; to promote the administration of justice for the public good; to uphold the honor and dignity of the profession of law; and, especially, to advance the cause of those who are damaged in person or property and who must seek redress therefore; to encourage friendship among the members of the bar; and to uphold and improve the adversary system and the right of trial by jury." (IAJ Bylaws, Article II *at* https://www.iowajustice.org/index.cfm?pg=bylaws (accessed December 6, 2017)).

As the Court faces questions regarding the limitations on the rights of Iowans to seek redress for violations of the rights guaranteed by the Iowa Constitution, IAJ is in a unique position to provide the Court with an overview not only of the historical development of Iowa Constitutional law and jurisprudence, but also of the historical development of the protections of individual liberties as part of our nation's history. IAJ is also in a unique position

to survey how other states have analyzed the question of qualified immunity under their state constitutions, something this Court has looked to in the past for guidance in resolving similar questions. The Brief is submitted by the above attorney members of IAJ's *Amicus Curiae* committee.

## ARGUMENT

### I. THE DOCTRINE OF QUALIFIED IMMUNITY IS INCOMPATIBLE WITH HISTORY'S FIERCE PROTECTION OF WHAT WOULD EVENTUALLY BE CONSTITUTIONAL RIGHTS AND LIBERTIES

Ancient and founding English and American political documents including charters, petitions, acts, declarations, constitutions, bills of rights, and court cases both pre-dating and surrounding the development of constitutional rights demonstrate two principles which render qualified immunity incompatible with rights guaranteed under any constitution. One, false arrests by the executive have been historically abhorred. Two, our predecessors had no qualms with rectifying such arrests if they occurred.

#### A. ANCIENT DOCUMENTS SUPPORT A FINDING THAT FALSE ARRESTS WERE ALWAYS DEEMED TO BE A VIOLATION OF THE PEOPLE'S RIGHT TO LIBERTY

The right of the People to be free from abusive executive authority dates back to *at least* 1215. At that time, King John of England was feuding with his land barons over payments. *See* LEONARD W. LEVY, ORIGINS OF THE BILL OF RIGHTS (Yale University Press 1999). The payments were not required by any

Parliamentary legislation, but were simply dictates from the King. "Trials" were often without a jury, in front of a biased judge, and held in a remote forum. Sometimes, subjects were imprisoned indefinitely without ever being told the nature of the charges. Subjects who were arrested and imprisoned for failing to pay became fed up.

Land barons met with the King on the banks of the River Thames in Runnymede and forged the social compact we now call the Magna Carta. Included in the agreement was that:

> No free man shall be seized or imprisoned, or stripped of his rights or possessions, or outlawed or exiled, or deprived of his standing in any way, nor will we proceed with force against him, or send others to do so, except by the lawful judgment of his equals or by the law of the land.

Constitution Society, *The Magna Carta*, http://www.constitution.org/eng/magnacar.htm (last visited 12/5/17) (citing Magna Carta). For a long time, the dictates of the Magna Carta worked as a check on tyrannical power. As time would tell, however, simply *declaring* the existence of rights is not a sufficient bulwark against abuse. Talk is cheap.

In the mid-1600's, our English ancestors one again found themselves dealing with yet another tyrant, King Charles I. Like King John, King Charles I extorted his subjects for money, not pursuant to any legislation from Parliament, but by his own decree. The grievance of the People was described in the 1628 English Petition of Right:

> …divers (many) of your subjects have of late been imprisoned without any cause showed; and when for their deliverance they were brought before your justices by your Majesty's writs of habeas corpus, there to undergo and receive as the court should order, and their keepers commanded to certify the causes of their detainer, no cause was certified, but they were detained by your Majesty's special command…and yet were returned back to several prisons, without being charged with anything to which they might make answer according to the law.

LEVY, *supra* (containing the English Petition of Right, 1628, ¶ 3.)

Our ancestors complained about having "had an oath administered unto them not warrantable by the laws or statutes" and having to appear to answer charges only to be "imprisoned, confined, and sundry other ways molested and disquieted." LEVY, *supra* (containing the English Petition of Right, 1628, ¶ 3.). In today's terms, the subjects were complaining about being falsely arrested and charged and having no good form of relief against such a practice.

In response to those complaints, in 1628 Parliament reaffirmed the same set of principles as set forth in the Magna Carta:

> no freeman may be taken or imprisoned or be disseized of his freehold or liberties, or his free customs, or be outlawed or exiled, or in any manner destroyed, but by the lawful judgment of his peers, or by the law of the land.

LEVY, *supra* (containing the English Petition of Right, 1628, ¶ 3.) While the Petition of Right worked for a time, by 1679 the English had to do more.

That year, Parliament passed legislation expressly protecting subjects from executive false arrests. The Habeas Corpus Act protected subjects from "being

committed for criminal or supposed criminal matters" and guaranteed that if a subject was arrested, he or she could petition for habeas corpus, and within three days, would have the right to know "the true causes of his detainer or imprisonment." Habeas Corpus Act, 1679, ¶ 1. The legislation was designed to give teeth to the guarantees set forth in the Magna Carta and the Petition of Right so that, once and for all, English subjects could be free from unreasonable arrest with recourse against a party depriving subjects of their liberty. It was clear to the English that it was insufficient to merely declare the existence of rights; the rights needed to be *enforced*.

### B. ENGLISH COURTS ENFORCED LIBERTY RIGHTS BY HOLDING THE GOVERNMENT ACCOUNTABLE IN CIVIL ACTIONS FOR DAMAGES

Most recognize the historical significance of the phrase, "The King is Sovereign." But what did it mean? Did it mean the King was above the law, and did not have to answer to the people when he trampled their rights? If so, does that mean that in the King's tradition, modern day governmental actors are also above the law and do not have to answer to the people for trampling their rights? The answers to both questions are a resounding no. English case law from the time of the American Revolution shows that the British were already holding the executive civilly accountable for false arrest. *See Wilkes v. Wood*, 98 Eng. Rep. 489 C.P. 1763.

In *Huckle v. Money*, 95 Eng. Rep. 768 C.P. 1763, the courts used language to describe the evils of illegal seizures (false arrests) as "worse than the Spanish Inquisition," "a law under which no Englishman would wish to live an hour," and "a most daring public attack made upon the liberty of the subject." In *Entick v. Carrington*, 95 Eng. Rep. 807 K.B. 1765, the court surmised that the only reason the practice of false arrests under general warrants had lasted so long was because of the "guilt or poverty of those upon whom such warrants have been executed," not because a remedy did not exist. In short, history holds the government accountable.

### C. AMERICA'S FOUNDING FATHERS BELIEVED LIBERTY WAS A FUNDAMENTAL, NATURAL, AND INALIENABLE RIGHT

At about the same time as the English declared their right to be free from governmental abuse, American liberty was trending, too. In 1606, Virginia became the first colony to observe due process rights for its residents by guaranteeing that they would "have and enjoy all Liberties, Franchises, and Immunities…as if they had been abiding and born, within this our Realm of England." http://www.let.rug.nl/usa/documents/1600-1650/the-first-virginia-charter-1606.php (last visited 12/5/17) (containing the text of the Virginia Charter, 1606).

In 1677, (West) New Jersey took things one step further and declared their right to be free not only from executive abuse, but also from legislative abuse,

and declared that freedom "forever." https://lonang.com/library/organic/1677-cnj/ (last visited 12/5/17); Leonard W. Leavy, Origins of the Bill of Rights 7 (1999). New Jersey's pronouncement was a turning point because in England, rights were sacred against the King but not Parliament. By declaring rights sacred against legislative abuse, New Jersey recognized the inherent nature of the rights and gave those rights a place at the top of the social hierarchy.

In 1776, Virginia followed suit and passed its first state constitutional bill of rights, among them that "a man hath a right to demand the cause and nature of his accusation" and that "general warrants" which allowed search and seizure when an "offence is not particularly described and supported by evidence, are grievous and oppressive, and ought not to be granted." Leonard W. Leavy, Origins of the Bill of Rights, Appx. 3 (1999) (quoting the Virginia Bill of Rights).

Though more and more states codified and guaranteed the rights of the People, the King's abuses still reigned at an all-time-high. Our forefathers deemed it necessary, and time, to forcefully declare their rights once again. In the Declaration of Independence they famously wrote, "He has combined with others to subject us to a jurisdiction foreign to our constitution, and unacknowledged by our laws; giving his assent to their acts of pretended legislation." Our ancestors recognized that they had "inalienable" rights; they recognized that those rights included "life, liberty, and the pursuit of happiness;" they knew it violated their right to liberty for the King to be arresting them for

false charges; and they were no longer going to tolerate it. What happened next was the American Revolution. After eight long years of war and death, America gained its unique independence.

### D. IOWA'S FOUNDING FATHERS INTENDED TO MAXIMIZE THE RIGHT TO LIBERTY BY ENSURING IOWA'S BILL OF RIGHTS WAS THE *BEST* IN THE COUNTRY

About a half-century later, as settlers moved west, Iowa rose into statehood out of territoriality. At that time, Iowa fully supported the idea of a supreme constitution and the ideal that Iowans had a natural, guaranteed right to liberty and freedom from false arrest.

In terms of substantive ideals, the drafters of the Iowa Constitution were ahead of the federal drafters, and Iowans have enjoyed a long history of our courts rejecting intrusions upon our liberties. *State v. Short*, 851 N.W.2d 474, 507 (Iowa 2014) (Cady, C.J., specially concurring). Unlike the federal constitution, the Iowa Constitution contained a Bill of Rights from the beginning, which its drafters considered more important than all other clauses of the Constitution put together. *Short*, 851 N.W.2d at 482. Indeed, the federal drafters considered it the responsibility of the states to preserve the rights of individuals. *State v. Baldon*, 829 N.W.2d 785, 808 (Iowa 2013) (citing I *Records of the Federal Convention of 1787* 356 (Max Farrand ed., 1937)).

Iowa's drafters wanted our Bill of Rights to contain provisions that would expand and not curtail the rights of the people. *Baldon,* 829 N.W.2d at 809. "[T]he record of the 1857 Iowa Constitutional Convention reflects a desire of its members 'to put upon record every guarantee that could be legitimately placed [in the constitution] in order that Iowa not only might be the first State in the Union, unquestionably as she is in many respects, but that she might also have the best and most clearly defined Bill of Rights.'" *Godfrey v. State*, 898 N.W.2d 844, 864 (Iowa 2017).

In 1857, when Iowa's constitutional delegates met in Iowa City to revise the Constitution, the president of the convention opened by acknowledging the fundamental nature and supremacy of the state's Constitution:

> The constitution of a State may be regarded, to a certain extent, as a fixed and permanent instrument, a higher law, for the guidance, not only of individual members of the body politic, but also a law to which the various departments of the government, in their action, must conform. It is the foundation upon which the superstructure of the legislation and jurisprudence of the State rests. Upon its character and principles, the prosperity and happiness of the social compact may be said much to depend. It is looked upon as embodying the spirit and policy of a people. It is in a word, "positive law."

http://publications.iowa.gov/7313/1/The_Debates_of_the_Constitutional_Convention_Vol%231.pdf (last visited 12/5/17) (containing The Debates of the Constitutional Convention of the State of Iowa, Vol. 1, January 20, 1857, P. 6-7) (hereinafter "Debates"). That kind of respect for Iowa's Constitution is still

echoed today. *Varnum v. Brien*, 763 N.W.2d 862, 875 (Iowa 2009) ("[t]he Iowa Constitution is the cornerstone of governing in Iowa. Like the United States Constitution, the Iowa Constitution creates a remarkable blueprint for government.").

When the Bill of Rights came up for debate, one delegate expressed Iowa's aspiration to have ours be the best Bill of Rights in the country:

> "They did not doubt that the people of Iowa had heretofore exercised all the rights which freemen may enjoy under any charter of liberty, but they did desire to put upon record every guarantee that could be legitimately placed there in order that Iowa not only might be the first State in the Union, unquestionably as she is in many respects, but that she might also have the best and most clearly defined Bill of Rights."

(Debates, P. 100).

The same delegate also warned his fellow delegates that while it seems superfluous to declare rights which are natural, the

> annals of the world also furnish many instances in which the freest and most enlightened governments that have ever existed upon earth, have been gradually undermined, and actually destroyed, in consequence of the people's rights not being guarded by written constitutions."

Debates, P. 101). He then reminded his colleagues of King John's abuses, why the Magna Carta became necessary, and how there must be remedies for a violation of the people's rights, something he called "a recognition of old rights, and a remedy for existing abuses." (Debates, P. 101). How history repeats itself.

When further debating privileges and immunities, the delegates expressed strong interest in allowing private citizens to sue the government for money damages for constitutional violations. In response to the assertion that a citizen could not sue the government, delegate Palmer stated: "I will modify my amendment by providing that the State shall be liable to an action at law in any court of record in this State." (Debates, P. 105). Delegate Hall concurred, stating, in regard to property rights: "The idea that a State can repeal a contract at its pleasure would, if carried out here, give the State a character so grossly unjust that I cannot agree to it." (Debates, P. 105).

Delegate Clarke, agreed, stating that if the government is to be granted the power to take away privileges and immunities, "the party injured should have the same mode of redress against the State, as he would have against an individual." (Debates, P. 109). Thus, it was not a novel idea to hold the government accountable for abuse, whether the abuse be to property rights, liberty rights, or some other constitutional right.

Overall, our Constitution "was designed to be the primary defense for individual rights, with the United States Constitution Bill of Rights serving **only as a second layer of protection**." Honorable Mark S. Cady, *A Pioneer's Constitution: How Iowa's Constitutional History Uniquely Shapes Our Pioneering Tradition in Recognizing Civil Rights and Civil Liberties*, 60 DRAKE L. REV. 1133, 1145 (2012) (emphasis added). The drafters' goal was not that they would create a good Bill

of Rights, or even a great Bill of Rights, but that they would write the best Bill of Rights in our young nation. *Id.*

One of the basic principles of government the Iowa Constitution serves to protect is that it "defines certain individual rights upon which the government may not infringe." *Varnum*, 763 N.W.2d at 875. Iowa's courts must, under all circumstances, "protect the supremacy of the constitution as a means of protecting our republican form of government and our freedoms." *Id.* This includes declining to afford qualified immunity to government officials who violate the rights of Iowans guaranteed by our state's Constitution.

## II. THIS COURT HAS A RICH AND STORIED HISTORY OF ESTABLISHING AND PROTECTING THE RIGHTS OF IOWANS UNDER OUR STATE CONSTITUTION.

With that history as a backdrop, this Court has, for its over 175 years of existence, boldly expanded the civil, constitutional, and human rights of Iowans. *Short*, 851 N.W.2d at 507. In so doing, this Court has moved forward, steadfastly taking part in the "march towards the highest liberty and equality that is the birthright of all Iowans." *Id.* This is despite the fact that, over the years, the United States Supreme Court has diluted the substance of the rights conferred by the federal Bill of Rights. *Short*, 851 N.W.2d at 485. The doctrine of qualified immunity is a clear example of such erosion.

Practically, many observers have noted the limiting effect of qualified immunity on civil rights litigation. In the *Bivens* line of cases, many plaintiffs'

hopes of righting constitutional wrongs have been dashed on the rocks of qualified immunity. Qualified immunity has been variously described as "fatal" to civil rights claims as it is rarely denied when invoked by defendants.[1] *See* Morgan Leigh Manning, *Less than Picture Perfect: The Legal Relationship between Photographers' Rights and Law Enforcement*, 78 TENN. L. REV. 105, 145 (2010)); Perry M. Rosen, *The Bivens Constitutional Tort: An Unfulfilled Promise*, 67 N.C. L REV. 337, 356 (1989) (the "most substantial obstacle to recovery by a constitutional tort plaintiff"). The net effect of this is a chilling effect on those who would seek recovery.

When the specter of qualified immunity dissuades a plaintiff from taking a case to court, there becomes a resultingly perverse environment wherein constitutional violations transpire but citizens do not seek a remedy and violators are not held accountable. Alexander A. Reinert, *Does Qualified Immunity Matter?*, 8 U. St. Thomas L. J. 477, 491 (2011). And this is not just an exaggerated hypothetical fear. Reinert studied civil rights litigators who bring constitutional violations against governmental actors. Most indicated a willingness to undertake cases only where liability was clear and where egregious violations took

[1] In a random sample of qualified immunity opinions decided by federal courts between 1988 and 2006, immunity was denied in only about 20% of reported cases. *See e.g.* Nancy Leong, *The Saucier Qualified Immunity Experiment: An Empirical Analysis*, 36 Pepp. L. Rev. 667, 692 (2009); Diana Hassel, *Living a Lie: The Cost of Qualified Immunity*, 64 Mo. L. Rev. 123, 126 n.65, 145 n. 106 (1999).

place. *Id.* at 493. Some even indicated that they would not undertake litigation where qualified immunity was a possible factor. *Id.* "The result may be that the vast majority of *Bivens* cases never test the limits of existing law, because the attorneys who file them select cases that are within the 'clearly established' zone that will defeat a qualified immunity defense." *Id.* at 494.

As courts across the nation, including the United States Supreme Court, have scaled back the protections guaranteed under the federal Bill of Rights, this Court has taken a different path. *Baldon*, 829 N.W.2d at 820 (collecting cases). Historically, as set forth below, the Iowa Supreme Court has acted to protect the rights of citizens under the state constitution even if those same rights would not be protected under federal jurisprudence. This Court should honor that history and decline to extend qualified immunity to claims brought against governmental actors under our state constitution. To afford government actors qualified immunity for violations of the Iowa Constitution would be to march backward. That is a result our state's constitutional history simply does not allow. The better result would be to follow the Court's tradition and allow for enforcement of the Iowa Constitution by allowing plaintiffs their day in court.

## III. SIMILARITIES BETWEEN THE FEDERAL AND IOWA CONSTITUTIONS SHOULD NOT RESULT IN THE COURT APPLYING QUALIFIED IMMUNITY TO CLAIMS BROUGHT UNDER THE IOWA CONSTITUTION.

This Court recognizes its responsibility to engage in independent analysis of state constitutional provisions. *Baldon*, 829 N.W.2d at 812. A state court interpreting its own constitution should give less deference to the United States Supreme Court's interpretation of the federal constitution than decisions from other states, "because 'federalism and other institutional concerns, explicitly or implicitly, pervade Supreme Court decisions declining to recognize rights *against states*.'" *Id.* at 821 (emphasis in original).

"Iowa has a proud tradition of concern for individual rights," and this Court "should not be reluctant to show greater sensitivity to the rights of Iowans under our constitution than the Supreme Court accords to their rights under the Federal Constitution." *State v. Roth*, 305 N.W.2d 501, 510-11 (Iowa 1981) (McCormick, J., dissenting). While decisions of the United States Supreme Court regarding the rights guaranteed under the United State Constitution are persuasive, they are certainly not binding. *Bierkamp v. Rogers*, 293 N.W.2d 577, 579 (Iowa 1980).

In general, Defendants offer three arguments urging this Court to interpret the Iowa Constitution the same as the United States Constitution.

Those arguments can be characterized as parallel language, uniformity, and deference. The Court should reject each of them.

### A. PARALLEL LANGUAGE BETWEEN THE FEDERAL CONSTITUTION AND THE IOWA CONSTITUTION DOES NOT MEAN THE TWO ARE IDENTICAL OR SHOULD BE INTERPRETED THE SAME

In citing federal laws applying qualified immunity for claims under the federal constitution, Defendants ask the Court to extend the federal doctrine of qualified immunity to claims under the Iowa Constitution. The Court should decline this invitation.

This Court has repeatedly expressed its position that regardless of the ultimate outcome, it will "jealously guard" its authority to follow an independent approach to claims made under the Iowa Constitution. *State v. Olsen*, 293 N.W.2d 216, 219 (Iowa 1980); *Atwood v. Vilsack*, 725 N.W.2d 641, 647 (Iowa 2006); *In re Detention of Hennings*, 744 N.W.2d 333, 337 (Iowa 2008); *State v. Effler*, 769 N.W.2d 880, 895 (Iowa 2009); *Reilly v. Iowa Dist. Court for Henry Cty.*, 783 N.W.2d 490, 494 (Iowa 2010); *State v. Cox*, 781 N.W.2d 757, 761 (Iowa 2010); *Short*, 851 N.W.2d at 492; *Baldon*, 829 N.W.2d at 803, 820 (Appel, J., specially concurring); *State v. Pettijohn*, 899 N.W.2d 1, 19 (Iowa 2017).

This includes state constitutional provisions that have nearly identical language and have the same scope, import, and purpose as the United States Constitution. *Pettijohn*, 899 N.W.2d at 19. "[T]here is powerful evidence that the

Iowa constitutional generation did not believe that Iowa law should simply mirror federal court interpretations." *Short*, 851 N.W.2d at 483.

In addition to an unwarranted delegation of power, strict reliance on United States Supreme Court decisions regarding constitutional rights carries with it the risk that interpretations of state constitutions can lead to confusion and needless complexity. For example, in the search and seizure context, the United States Supreme Court has adopted at least five different methods by which to analyze such cases. Likewise, the United States Supreme Court and the federal circuit courts have developed several methods by which to analyze whether a particular governmental actor is entitled to qualified immunity for a constitutional violation.

At least one Justice on this Court has been especially critical of what he refers to as "lockstepping" state law to federal precedent, calling it "an aggressive and maximalist approach to the law," and characterizing it as "the antithesis of the ordinary judicial method, which grinds more slowly and finely, decides what needs to be decided and no more, reserving future legal questions for the next case." *Baldon*, 829 N.W.2d at 824 (Appel, J., specially concurring "to review the foundations of the well-established Iowa law that we jealously reserve our right to construe our state constitution independently of decisions of the United States Supreme Court interpreting parallel provisions of the Federal Constitution.").

Moreover, there is a substantive difference between constitutional causes of action and causes of action arising from other areas of law. *See Dorwart v. Caroway*, 58 P.3d 128, 137 (Mt. 2002) ("[c]ommon law causes of action intended to regulate relationships among and between individuals are not adequate to redress the type of damage caused by the invasion of constitutional rights."). As statutory claims grant citizens the ability to seek recovery for a created cause of action, the legislature can also create partial or total immunity from suit. The same cannot be said of constitutional claims:

> … [c]itizens are to be free from government intrusion into their speech, their religious beliefs, their right to assemble, and more. Those rights are public rights, given to all citizens; as a result, the justifications for limiting claims against the state in statutory or common law suits are inapposite to constitutional claims. Whereas the General Assembly can limit claims against the state to conserve resources, any restriction of Constitutional rights must survive judicial scrutiny.

*See* R. Gauthier, *Comment: Kicking and Screaming: Dragging North Carolina's Direct Constitutional Claims Into the 21st Century*, 95 N.C.L. Rev. 1735, 1759 (2017).

That is not to say that federal precedent is useless when the state and federal Constitutions contain parallel language. However, the Court should not just blindly accept the United States Supreme Court's interpretation of constitutional rights and the immunities afforded for their violations. Instead, the Court must exercise its "best, independent judgment of the proper parameters of state constitutional commands." *Short*, 851 N.W.2d at 490.

## B. ARGUMENTS REGARDING UNIFORMITY ARE MISPLACED AND, IN THIS CONTEXT, FAIL TO GIVE CREDIT TO OUR CAPABLE LAW ENFORCEMENT OFFICERS.

A second argument advanced by Defendants in favor of affording governmental actors qualified immunity for violations of the Iowa Constitution is that "[c]onsistency, and not some perceived distinction between the manner in which similar, if not identical claims can be brought, should be the goal." (Def. Br. p. 19). Such an argument, in essence, is that law enforcement will be too confused to know when it may be violating a person's rights under the Iowa Constitution and when it may be violating a person's rights under the United States Constitution, so the rights under each should be the same.

This argument relies on a false distinction and fails to give law enforcement enough credit. Law enforcement officials need not worry about two standards; they need only worry about the most restrictive standard. *Baldon*, 829 N.W.2d at 827. This argument also ignores the expert competence of our state's law enforcement personnel, and "we should not sell their abilities so short." *Id.*

To replace independent interpretations of the Iowa Constitution with federal interpretations of the United States Constitution would convert this Court "into a legal chameleon that changes color with the latest changes in the jurisprudence of the United States Supreme Court." *Id.* In the qualified

immunity context, that jurisprudence has become a moving target. This Court ought not to put itself, or the people of Iowa, at the mercy of these ever-changing federal interpretations.

### C. DEFERENCE TO FEDERAL JURISPRUDENCE IS IMPROPER WHEN IT RESULTS IN THE EROSION OF THE INDIVIDUAL RIGHTS OF IOWANS

Defendants finally argue that "[t]he policy considerations which support affording qualified immunity to government employees do not change, just because the focus shifts from the federal constitution to the state constitution." (Def. Br., p. 19). In other words, because qualified immunity exists for certain claims under the United States Constitution, so too must qualified immunity exist for certain claims under the Iowa Constitution. The rights recognized by the United States Supreme Court under the federal Constitution set a floor below which the scope rights guaranteed by the Iowa Constitution cannot fall, not a ceiling above which it cannot rise. *Pettijohn*, 899 N.W.2d at 26.

The United States Supreme Court itself has recognized the fundamental importance of state courts being "left free and unfettered" to interpret state constitutions. *Minnesota v. National Tea Company,* 309 U.S. 551, 557 (1940); *State v. Ochoa*, 792 N.W.2d 260, 264 (Iowa 2010). To blindly follow the holdings of the United States Supreme Court in interpreting the federal Constitution, simply because they are the holdings of the United States Supreme Court, is tantamount

to abdicating this Court's constitutional role in state government. *Ochoa*, 792 N.W.2d at 267.

"[R]eliance on decisions of the United States Supreme Court to interpret state constitutional provisions is 'misplaced' and an 'unwarranted delegation of state power to the Supreme Court.'" *Short,* 851 N.W.2d at 487. There is nothing in the United States Constitution that delegates to the Supreme Court the power to be the final authority regarding interpretation of state constitutions. *Baldon*, 829 N.W.2d at 809. "[T]he notion that members of the United States Supreme Court have some kind of superior wisdom that [this Court] must show deference to when interpreting provisions of the Iowa Constitution is doubtful at best. History shows otherwise." *Id.* at 827.

In part, this is because history has shown us that federal courts have come up short in the protection of basic American rights thought to be protected by the U.S. Constitution. *Id.* at 828. That is certainly the case regarding American rights left unprotected because of the doctrine of qualified immunity.

## CONCLUSION

Federal constitutional rights are intended to be invaluable. As history demonstrates, constitutional rights under the Iowa Constitution were intended to be even more invaluable. Rejecting a qualified immunity defense to actions invoking the Iowa Bill of Rights recognizes the importance of those rights and maintains Iowa's tradition of jealously guarding the rights of our citizens.

## CERTIFICATE OF COST

I, Joel E. Fenton, certify that there was no cost to reproduce copies of the preceding Brief of Amicus Curiae – Iowa Association for Justice because the appeal is being filed exclusively in the Appellate Courts' EDMS system.

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