IN THE SUPREME COURT OF IOWA

SUPREME COURT NO. 18-1856
UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF IOWA, CENTRAL DIVISION
CASE NO. C 15-3168-MWB

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.

CERTIFIED QUESTIONS FROM THE HONORABLE MARK W. BENNETT

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 RIGHTS GUARANTEED BY THE IOWA CONSITUTION ARE UNIQUE AND SEPARATE FROM FEDERAL RIGHTS

"The mere fact that the United States Supreme Court has developed an approach does not bind us to follow it if we think there is a better, sounder approach under the Iowa Constitution." *State v. Wickes,* 910 N.W.2d 554, 575 (Iowa 2018) (Appel, J., specially concurring).

Iowa's 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).

"As has been thoroughly canvassed in some of our other opinions, the Iowa Supreme Court has a long history of independent adjudication of state constitutional issues. In recent decades, we have reemphasized that independent constitutional tradition." *State v. Coleman*, 890 N.W.2d 284, 296 (Iowa 2017)

In answering the questions certified by the federal district court's October 25, 2018 order, this Court must remain true to the above principles. Whether it is a question of who (or what) can assert qualified immunity and who ultimately decides that question, the Court must adhere to the just result that immunity and insulating wrongdoers from the damages caused by their actions should be the exception and not the rule.

A. This Court has steadfastly rejected the use of federal constitutional precedent for Iowa constitutional claims.

In honoring the independence of the Iowa Constitution, this Court has chosen to lead rather than follow. *See State v. Short*, 851 N.W.2d 474, 507 (Iowa 2014) (Cady, C.J., specially concurring) ("As Iowans, we are deservingly proud of a long history of rejecting incursions upon the liberty of Iowans, particularly because we have so often arrived to the just result well ahead of the national curve."); *State v. Cline*, 617 N.W.2d 277, 285 (Iowa 2000), *abrogated on other grounds by State v. Turner*, 630 N.W.2d 601 (Iowa 2001) ("our court would abdicate its constitutional role in state government were it to blindly follow federal precedent on an issue of state constitutional law"); *State v. Pals*, 805 N.W.2d 767, 771-72 (Iowa 2011) ("[e]ven where a party has not advanced a different standard for interpreting a state constitutional provision, we may apply the standard more stringently than federal case law.");

Most recently, writing for the majority in *Baldwin I*, Justice Mansfield rejected the *Harlow v. Fitzgerald* federal qualified immunity test in the context of a claim for wrongful arrest: "qualified immunity should be shaped by the historical Iowa common law as appreciated by our framers and the principles discussed in Restatement (Second) of Torts section 874A." *Baldwin v. City of Estherville*, 915 N.W.2d 259, 280 (Iowa 2017).

Despite that forceful and clear mandate, the dissenting justices would have gone a step further and rejected immunity for state constitutional violations:

> [T]he policy-oriented federal doctrine of statutory qualified immunity does not provide a model for determining whether individuals are entitled to qualified immunity for Iowa constitutional torts. The federal doctrine of statutory qualified immunity progressively dilutes legal norms, embraces numerous false assumptions, fails to recognize the important role of juries in restraining government, and is inconsistent with important tenants of Iowa law. We should not voluntarily drape our constitutional law with the heavy chains of indefensible doctrine. We should aim to eliminate fictions in our law and be honest and forthright on the important question of what happens when officers of the law commit constitutional wrongs that inflict serious reputational, emotional, and financial harms on our citizens.

Id. at 283-84 (Appel, J., dissenting). *See also Wickes,* 910 N.W.2d at 575 (Appel, J., specially concurring) (noting that the fact that the U.S. Supreme Court has developed an approach does not bind this Court to follow that approach if "there a better, sounder approach under the Iowa Constitution" and recalling "Justice Harlan's admonition that the protections afforded by individual liberties tend to be diluted by the lowest-common-denominator pressures of federalism, considerations wholly absent when we consider questions under the Iowa Constitution.").

The approach this Court has long taken is consistent with the expectations of the federal constitutional drafters, who 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)). *See also Godfrey v. State*, 898 N.W.2d 844, 864 (Iowa 2017) (the record of Iowa's 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 . . . might also have the best and most clearly defined Bill of Rights.'').

In *Godfrey,* this Court held that "when a constitutional violation is involved, more than mere allocation of risks and compensation is implicated. The emphasis is not simply on compensating an individual who may have been harmed by illegal conduct, but also upon deterring unconstitutional conduct in the future." *Id.* at 877. *See also* Gary S. Gildin, *Redressing Deprivations of Rights Secured by State Constitutions Outside the Shadow of the Supreme Court's Constitutional Remedies Jurisprudence*, 115 PENN. ST. L. REV. 877, 878 (Spring 2011) ("victims of official misconduct must have recourse to effective relief if limits on governmental power are to be meaningful.").

If that is the goal, it is of highest importance for this Court to continue to "jealously guard" efforts to erode the Iowa Constitution's effect. Too great an expansion of immunities would do just that. The grant of immunity—in

whatever form—must be narrow, consistent, and devoid of special interests. All government officials have an obligation to carry out their duties by supporting and not undermining the Iowa Constitution. They must be held accountable for constitutional violations. Immunity, at least under developed federal precedent, is the antithesis of accountability.

B. Federal courts have eroded the rights and remedies guaranteed by the United States Constitution in Section 1983 litigation.

Congress enacted 42 U.S.C. §1983 in an effort to provide a remedy for violations of the Federal Constitution. That statute has been narrowly interpreted and the rights it intended to protect have been eroded.

While it may make sense for a state's highest court to look to Section 1983 jurisprudence in interpreting state statutes that mirror Section 1983, it makes less sense (if any) to do so when state constitutions are deemed self-executing. In *Godfrey*, this Court decided the Iowa Constitution is self-executing. *Godfrey*, 898 N.W.2d at 871. Thus, "[t]he appropriate starting point for ascertaining rules for liability for state constitutional violations then is state law, not the intent of the 1871 federal Congress." Gildin, 115 PENN. ST. L. REV. at 901.

Lest we fall victim to the issues that now plague the federal system, this Court must establish a coherent doctrine going forward regarding the scope of immunity for claims of Iowa constitutional violations. In *Baldwin I,* this Court

kept open the possibility that immunity could become a patchwork of differing rules and standards for differing officials in differing circumstances:

> We leave open a number of other issues. These include the possibility that constitutional claims other than unlawful search and seizure may have a higher *mens rea* requirement, such as intent, embedded within the constitutional provision itself. In other words, it may take more than negligence just to violate the Iowa Constitution. They also include the possibility that common law absolute immunities, such as judicial immunity or quasi-judicial immunity, could apply to state constitutional claims. And they include the potential applicability of provisions in chapters 669 and 670 other than sections 669.14 and 670.4. We do not address those issues today.

Baldwin, 915 N.W.2d at 281. The Court must resist that temptation.

Such a hodge-podge of immunity standards would doom claims for Iowa constitutional violations to the same fate as section 1983 litigation as described below by Professor John Jeffries. A carefully guarded solution begins with the question of whether *Baldwin I* qualified immunity is applicable to <u>all</u> government officials and entities. Professor Jeffries says the following about all forms of immunity:

> Critiques of existing doctrine provide the basis for proposed changes. *The analysis begins with absolute immunity, then proceeds to absolute liability, and concludes with extended consideration of qualified immunity. I call for curtailment of the first two categories and reform of the third.* Overall, these changes would shift the law toward greater damages liability for constitutional liability, but not across the board. Liberalization of recovery would be the net effect of reforms that cut in both directions. The overall goals are preservation of money damages as a means of enforcing constitutional rights; protection against

> the downside of unconstrained damages awards and their effect on the functioning of government and the development of constitutional law; and rationalization of the law through simplification of existing doctrine....*[t]he best balance of those conflicting goals lies in adopting some version of a fault-based standard as the general liability rule for constitutional torts and in adhering closely to that standard in almost all situations.*

John C. Jeffries, *The Liability Rule for Constitutional Torts*, 99 VA. L. REV. 207, 209 (April 2013) (emphasis added).

As the Court considers the questions presented by the district court, it must also recall the strong deference it gave to our Constitution in *Varnum v. Brien*, 763 N.W.2d 862, 875 (Iowa 2009), in which the Court made clear that "[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." Further,

> [a]mong other basic principles essential to our form of government, the constitution defines certain individual rights upon which the government may not infringe. *See* Iowa Const. art. I ("Bill of Rights")…. All these rights and principles are declared and undeniably accepted as the supreme law of this state, against which no contrary law can stand. *See* Iowa Const. art. XII, § 1 ("This constitution shall be the supreme law of the state, and any law inconsistent therewith, shall be void.").
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> ***
>
> It is also well established that 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. at 875. In answering the questions certified by the Federal district court, this Court must act carefully, guarding the Iowa Constitution and holding it delicately in the Court's hands as if it were a precious gem. Because, of course, it is.

C. To avoid mirroring Federal erosion, this Court must develop concise, consistent principles in constitutional tort claims.

Standing guard for the Iowa Constitution is not a new concept. This Court's Chief Justice has written about the importance of remaining resolute in the face of efforts to erode the individual protections provided by the Iowa Constitution:

> As Iowans, we are deservingly proud of a long history of rejecting incursions upon the liberty of Iowans, particularly because we have so often arrived to the just result well ahead of the national curve. Yet, we cannot ignore that our history of robust protection of human rights owes in no small part to our authority within America's federalist system to independently interpret our constitution. Similarly, we must not forget that the virtue of federalism lies not in the means of permitting state experimentation but in the ends of expanded liberty, equality, and human dignity. A court that categorically ignores these distinctly human ends can only accomplish injustice. Thus, we have recognized that "[w]hen individuals invoke the Iowa Constitution's guarantees of freedom and equality, courts are bound to interpret those guarantees…."
>
> It goes without saying our decisions have not always been without their detractors. As we pointed out in *State v. Lyle*, also decided today, "[o]ur court history has been one that stands up to preserve and protect individual rights regardless of the consequences." 854 N.W.2d 378, 403 (Iowa 2014). Yet, history has repeatedly vindicated, and the people of Iowa have

> repeatedly embraced, the bold expansions of civil, constitutional, and human rights we have undertaken throughout the 175 years of our existence as a court. …
>
> Today's decision is another step in the steady march towards the highest liberty and equality that is the birthright of all Iowans; it will not be the last.

Short, 851 N.W.2d at 507.

In *Short*, the majority noted that over time United States Supreme Court decisions diluted the substance of the rights conferred by the Federal Bill of Rights, particularly regarding search and seizure law. It also recognized that concerns were raised about the potential that the pronouncements of Federal courts in applying the Bill of Rights to the states would result in the diminution of individual rights. *Id.* at 485-86.

Justice Appel engaged in a similar discussion in *State v. Baldon*. In a concurring opinion, he discussed the history of state constitutional interpretations vis-à-vis then-existing Federal caselaw and the long line of cases in which the Court "jealously reserve[d] our right to construe our state constitution independently of decisions of the United States Supreme Court." *Baldon*, 829 N.W.2d at 803.

This Court did just that in *Baldwin I*, not just rejecting *Harlow* immunity, but also rejecting immunity for state tort claims. *Baldwin*, 915 N.W.2d at 279-80. Rather, this court charted a separate course "shaped by the

historical Iowa common law as appreciated by our framers and the principles discussed in Restatement (Second) of Torts section 874A." *Id*. In short, this Court embraced "all due care" as its benchmark in determining whether qualified immunity should be granted. *Id*. at 280. In addition, the Court placed the burden of proof on the defendant seeking qualified immunity, leaving it up to government officials to establish a set of facts that, if believed by a jury, would provide qualified immunity.

Now, the Court must answer the certified questions in a way that preserves the essence of its decision in *Baldwin I*: that this Court has charted a course that seeks to protect individual rights guaranteed by the Iowa Constitution; that this Court does not seek to provide any safe haven for governmental actors or entities that violate the Iowa Constitution; and that this Court seeks to shield only those governmental actors or entities that have acted with all due care to conform to the requirements of the law. Erecting additional obstacles to such claims, as the governmental actors and entities in this case will surely argue, does not protect the Iowa Constitution. Nor does searching for special rules for special governmental actors. The *Baldwin I* ruling is sound. The ruling is clear. At all costs, the Court must avoid wandering off course and thereby limiting the rights of recovery for Iowans aggrieved by violations of their state constitutional rights.

CONCLUSION

As previously stated, any attempt to shield those who violate Iowa Constitutional rights like those being adjudicated in cases such as *Godfrey*, *Baldwin I*, and the instant case must be the exception rather than the rule so that those precious rights can indeed be guarded, and to ensure that the activities and pursuits of the people's government do not cross the line into actionable violations. Goals such as enforcing accountability, ensuring that the injured receive just recompense, and deterring instances of wrongful activity are all dependent on the ability of the courts to ensure that the citizen seeking redress of grievances in the courts is not deflected from bringing an action by rigid, overbroad legal constructs that hamstring the very notion of seeking justice in the courts. Any balancing of interests must not lose sight of the weighty importance of the constitution of the State of Iowa and the rights it vouchsafes. Any action this Court takes must necessarily depend on the solemn duty to interpret and apply the Iowa Constitution. This Court should take this opportunity to demonstrate that prized liberties and rights are best maintained by careful protection of individual rights in any consideration of qualified immunity for governmental actors when violations of the Iowa Constitution occur.

CERTIFICATE OF COST

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