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Supreme Court No. 24-0346

IN THE
IOWA SUPREME COURT

KELLY BRODIE, DR. JOHN HEFFRON, KATHERINE KING, DR. MICHAEL LANGENFELD & KATHERINE RALL,
Plaintiffs/Appellants,

v.

JERRY R. FOXHOVEN, RICHARD SHULTS, JERRY REA, MOHAMMAD REHMAN, GLENWOOD RESOURCE CENTER & IOWA DEPARTMENT OF HUMAN SERVICES,
Defendants/Appellees.

On Appeal from the Iowa District Court for Mills County
Case No. LACV027160
Hon. Craig M. Dreismeier, District Court Judge

BRIEF FOR APPELLANTS

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STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

I. Whether the district court erred in holding that the protection of persons with disabilities from abuse, experimentation, and torture while in the State's care is not a "clearly defined and well-recognized public policy" of the State of Iowa.

ROUTING STATEMENT

This case satisfies multiple criteria for retention by the Supreme Court under Iowa Rule of Appellate Procedure 6.1101(2).

This case "present[s] substantial issues of first impression," "present[s] fundamental and urgent issues of broad public importance requiring prompt or ultimate determination by the supreme court," and "present[s] substantial questions of enunciating or changing legal principles." Iowa R. App. P. 6.1101(2)(*c*), (*d*), (*f*).

Whether protecting persons with disabilities in the State's care is a clearly defined and well-recognized public policy of the State of Iowa is a substantial question of first impression. The Supreme Court has never determined whether this public policy—created by Iowa law, federal law, and the post-Holocaust Nuremberg Code—can support a claim for wrongful discharge in violation of public policy.

This is also a fundamental and urgent issue of Iowa law. This issue extends far beyond the parties before the Court today. It implicates a fundamental cornerstone of our democratic system—that all people have the right to dignity and bodily integrity.

NATURE OF THE CASE

The plaintiffs sued the defendants—all State officials or entities collectively referred to as the "State"—for wrongful discharge in violation of public policy and whistleblower retaliation.

On January 4, 2023, the district court entered an interlocutory order granting the State's motion for summary judgment and dismissing the plaintiffs' wrongful-discharge claims. On February 1, 2024, the district court entered final judgment granting the State's second motion for summary judgment and dismissing the plaintiffs' remaining claims for whistleblower retaliation.

On appeal, the plaintiffs challenge the district court's January 4, 2023 order holding there was no clearly defined and well-recognized public policy supporting the plaintiffs' wrongful-discharge claim.

STATEMENT OF THE FACTS

I. This case involves the abuse, experimentation, and torture of the most vulnerable Iowans in the State's care.

This case arises out of the State's inconceivable abuses of the most vulnerable Iowans—persons with disabilities in the State's care at Glenwood Resource Center (GRC). The conduct of the State was so egregious it caught the attention of the United States Department of Justice. The resulting investigation found that the State's actions violated the fundamental rights of GRC's residents under the Fourteenth Amendment to the United States Constitution. D0185, Decl. Exh. B (Dep. Exh. 46), DOJ Report at 1 (12/30/2022).

These unconscionable abuses included "conducting unregulated experiments on human subjects, failing to provide constitutionally adequate medical and behavioral health care at [GRC] and utilizing unnecessary physical restraints." D0185, Decl. Exh. B (Dep. Exh. 46), DOJ Report at 2-3 (12/30/2022).

1. *The State conducts harmful "experiments" on GRC residents who cannot meaningfully consent or resist.*

The Department of Justice recounted that after one of the defendants, Jerry Rea, became GRC superintendent in September 2017, he "embarked on an initiative to conduct experiments on residents of

[GRC] and other DHS-run facilities in order to make [GRC] 'relevant.'" D0185, Decl. Exh. B (Dep. Exh. 46), DOJ Report at 5 (12/30/2022). Rea—who is not a medical doctor or licensed psychologist—"then instigated and directed research related to both physical and behavioral health on Glenwood residents, without their consent and without appropriate safeguards." D0185, Decl. Exh. B (Dep. Exh. 46), DOJ Report at 5 (12/30/2022).

These "experiments" included a so-called "hydration study" where GRC residents were subjected to harmful levels of hydration without regard to their individual needs—purportedly for the purpose of researching potential pneumonia treatments. D0185, Decl. Exh. B (Dep. Exh. 46), DOJ Report at 5-11 (12/30/2022). GRC officials never obtained—or even requested—consent for this "experiment." D0185, Decl. Exh. B (Dep. Exh. 46), DOJ Report at 5 (12/30/2022) ("Glenwood was required to obtain the informed consent of the individual participants. Glenwood did not do so when the interventions were implemented in 2018.").

Indeed, these GRC residents had no capacity to consent or ability to refuse participation. Most of them "were tube-fed and unable to resist

increased fluid intake." D0185, Decl. Exh. B (Dep. Exh. 46), DOJ Report at 6 (12/30/2022).

The "hydration study" resulted in overhydration and serious physical injury for several GRC residents, and even increased pneumonia rates. D0185, Decl. Exh. B (Dep. Exh. 46), DOJ Report at 9 (12/30/2022). It exacerbated preexisting conditions and caused significant discomfort. D0185, Decl. Exh. B (Dep. Exh. 46), DOJ Report at 9-10 (12/30/2022). These negative health consequences were completely ignored by Rea, who continued this "experiment" heedlessly. D0185, Decl. Exh. B (Dep. Exh. 46), DOJ Report at 10 (12/30/2022). One GRC resident ultimately died during this "hydration study." D0185, Decl. Exh. B (Dep. Exh. 46), DOJ Report at 10 (12/30/2022).

The Department of Justice report repeatedly details how this "research" and "experimentation" did not satisfy any of the requirements for human-subject experimentation conducted in a clinical setting. D0185, Decl. Exh. B (Dep. Exh. 46), DOJ Report at 8-11 (12/30/2022). This "experiment" was conducted on GRC residents who did not even have pneumonia—the condition Rea was allegedly trying to treat. D0185, Decl. Exh. B (Dep. Exh. 46), DOJ Report at 9

(12/30/2022). There was no control group. D0185, Decl. Exh. B (Dep. Exh. 46), DOJ Report at 9 (12/30/2022). And Rea applied multiple interventions at the same time, making it impossible to know whether any particular action had any treatment efficacy. D0185, Decl. Exh. B (Dep. Exh. 46), DOJ Report at 9 (12/30/2022).

Disturbingly, this "hydration study" is shockingly similar to an "experiment" conducted at the Dachau concentration camp. In that "hydration study," Nazi officials forced Romani inmates to drink seawater to observe the health consequences. *See* Matthew Lippman, *The Other Nuremberg: American Prosecutions of Nazi War Criminals in Occupied Germany*, 3 Ind. Int'l & Comp. L. Rev. 1, 25 (1992).

Abuses like this resulted in "[t]he Nuremberg Code's first and most important principle" that "[t]he voluntary consent of the human subject is absolutely essential." Jacob Schuman, *Beyond Nuremberg: A Critique of "Informed Consent" in Third World Human Subject Research*, 25 J. of Law & Health 123, 125 (2012). The State disregarded this fundamental law in furtherance of nothing more than Rea's naked ambition to make GRC "relevant" as a research institution.

Worse still, Rea intended to go further. He apparently wanted to "research 'reinforcer pathology' and 'impulsivity,' which could be applied to drugs, gambling, or sexual behavior." D0185, Decl. Exh. B (Dep. Exh. 46), DOJ Report at 11 (12/30/2022). In furtherance of this "research," Rea "directed the purchase of software and equipment" "over the objection of senior [GRC] leadership"—among them, the plaintiffs—that included "a set of computer-generated images of nude and clothed children to be used as part of [research regarding] sexual behavior." D0185, Decl. Exh. B (Dep. Exh. 46), DOJ Report at 11 (12/30/2022).

These abuses were of such severity that the Department of Justice felt compelled to remind the State that "[i]ndividuals with disabilities are not human guinea pigs, and like all persons, they should never be subject to bizarre and deviant pseudo medical 'experiments' that injure them. Human experimentation is the hallmark of sick totalitarian states and has no place in the United States of America." Press Release, *Justice Department Alleges Conditions at Iowa Institution for Individuals with Disabilities Violate the Constitution*, available at https://bit.ly/3JItFKp (last accessed May 15, 2024).

As the Department of Justice report confirms, this was not "experimentation." It was torture.

And when state legislators inquired about these abuses and GRC's "unusually high death rate," the State—through DHS leadership—lied about it. D0185, Decl. Exh. B (Dep. Exh. 46), DOJ Report at 10 (12/30/2022). DHS falsely claimed that "these experiments were having a positive impact." D0185, Decl. Exh. B (Dep. Exh. 46), DOJ Report at 10 (12/30/2022). This "materially misleading" claim stood in stark contrast to the reality that "the average number of individuals experiencing an aspiration pneumonia ... had grown by 122% since beginning the experiment." D0185, Decl. Exh. B (Dep. Exh. 46), DOJ Report at 10 (12/30/2022).

2. *The State tortures GRC residents through the improper use of dangerous physical restraints.*

On top of this torture through harmful "experimentation" on unconsenting GRC residents, the use of dangerous physical restraints "skyrocketed" under Rea's leadership. D0185, Decl. Exh. B (Dep. Exh. 46), DOJ Report at 27 (12/30/2022). GRC "data show that restraints increased by 301% from 2017 to 2019, going from 223 restraints facility-wide in calendar year 2017, to 895 in calendar year

2019." D0185, Decl. Exh. B (Dep. Exh. 46), DOJ Report at 27 (12/30/2022).

This abuse of GRC residents through excessive physical restraints was made possible by Rea's campaign to dismantle protections intended to prevent these abuses. This includes the termination of "the training requirements from [a] DOJ consent decree in 2003" that were "torn apart." D0185, Decl. Exh. B (Dep. Exh. 46), DOJ Report at 37 n.70 (12/30/2022). This campaign also included the replacement of GRC's longstanding restraint policies with new policies changing the use of physical restraints from "an emergency or last-resort response" to GRC's "go-to behavioral response." D0185, Decl. Exh. B (Dep. Exh. 46), DOJ Report at 27 (12/30/2022).

Rea's campaign then went further by removing the most important protection for GRC residents—employees like the plaintiffs who opposed these changes. Attachments to D0142, Exhs. B-G at 4 (Answer to Interrogatory No. 2) (11/04/2022); *see also* D0185, Decl. Exh. B (Dep. Exh. 46), DOJ Report at 37 n.70 (12/30/2022) ("The changes to training were initiated by Dr. Rea and pursued over the concerns of staff.").

The worst abuses reported by the Department of Justice were confirmed by DHS's own independent expert, Dr. Mark S. Diorio, Ph.D., MPH. Dr. Diorio confirmed the "excessive emergency physical restraint was used with some individuals without guardian consent." D0185, Decl. Exh. F (Dep. Exh. 9), Diorio Report at 12 (12/30/2022). Dr. Diorio reported that Rea replaced the previous restraint policies with one "[h]e felt ... was ... more fiscally prudent" resulting in the "use[ ] [of] chemical restraints, physical restraints, programmatic physical restraints, and medical restraints ... that put individuals at risk for harm." D0185, Decl. Exh. F (Dep. Exh. 9), Diorio Report at 12 (12/30/2022).

II. The plaintiffs are terminated for objecting to the abuse and torture of GRC residents.

The plaintiffs were GRC employees when Rea began his "experimentation" and abuse of GRC residents. Kelly Brodie "was employed as an Assistant Superintendent of Treatment Support Services"; "Dr. John Heffron was employed as a physician"; Katherine King served as a Treatment Program Administrator and was "a guardian for two patients at GRC"; Dr. Michael Langenfeld "was employed as a physician"; and "Katherine Rall was employed as the ...

Director of Quality Management." D0254, M.S.J. Order at 2-3 (02/01/2024).

The plaintiffs' opposition to Rea's abuses, and attempts to protect GRC residents from nonconsensual "experimentation," among other actions, resulted in "acts of harassment, retaliation, and to the creation of a toxic and hostile work environment." Attachments to D0142, Exhs. B-G at 4 (Answer to Interrogatory No. 2) (11/04/2022). Ultimately, each plaintiffs' employment was terminated. Attachments to D0142, Exhs. B-G at 4 (11/04/2022). The report of DHS's own expert, Dr. Diorio, again confirms this, detailing Rea's "authoritarian, disrespectful, non-supportive, toxic, frustrating, retaliatory, and unfair" management of GRC. D0185, Decl. Exh. F (Dep. Exh. 9), Diorio Report at 5 (12/30/2022).

Following their terminations, the plaintiffs sued the State for wrongful discharge in violation of public policy, among other claims. D0001, Petition at Law ¶¶ 190-206 (11/06/2020).

III. The State claims that protecting persons with disabilities from abuse, experimentation, and torture is not "a clearly defined and well-recognized public policy."

The parties then engaged in two years of discovery. This extended discovery—and the parties' inability to resolve the case with any expediency—resulted from the State's numerous efforts to obstruct the discovery process.

The State refused for months to designate representative witnesses under Iowa Rule of Civil Procedure 1.707(5), and delayed these depositions by months even after the district court granted the plaintiffs' motion to compel. D0080, Motion to Compel at 2-4 (11/08/2021). The State produced 1 million pages of documents in response to the plaintiffs' requests. This production included hundreds of thousands of pages of non-responsive and irrelevant documents.

After two years of this misconduct, the State moved for summary judgment on the plaintiffs' claims for wrongful discharge in violation of public policy. D0141, S.J. Motion (11/04/2022). In this motion, the State argued that the plaintiffs had failed in their "burden to demonstrate that the public policy they are relying on is clearly defined or well recognized." D0141, M.S.J. Brief at 3 (11/04/2022). The State faulted

each plaintiff because they "did not identify any specific statutes, regulations, or provisions of the constitution" in their petition or interrogatory answers. D0141, M.S.J. Brief at 3-10 (11/04/2022). The State did not move for summary judgment on any other element of the wrongful-discharge claim. D0140, S.J. Motion (11/04/2022).

In resistance, the plaintiffs highlighted their interrogatory answers—which the State itself filed in support of its motion—identifying the public policies at issue to include "laws and policies regarding improper experimentation on GRC residents in violation of state and federal law." D0153, M.S.J. Resistance ¶¶ 11-17 (11/23/2022). The plaintiffs also identified public policy against the "implement[ation] [of] unlawful human subject experimentation" and "overhydration on medically fragile patients without any medical justification." D0153, M.S.J. Resistance ¶ 17 (11/23/2022).

Based on these facts, the plaintiffs directed the district court to Iowa Supreme Court precedent, including *Dorshkind v. Oak Park Place of Dubuque II, L.L.C.*, 835 N.W.2d 293 (Iowa 2013). There, the Iowa Supreme Court held that "a clearly defined and well-recognized public policy" was created by a statute providing "[t]he general assembly finds

that assisted living is an important part of the long-term care continua in this state." *Id.* at 304.

The plaintiffs pointed out to the district court that, just like the statute at issue in *Dorshkind*, the statutes governing GRC express "the intent of the general assembly that the service system for persons with disabilities emphasize the ability of persons with disabilities to exercise their own choices about the amounts and types of services received." D0153, M.S.J. Resistance at 9 (11/23/2022) (quoting Iowa Code § 225C.1(2)).

IV. The district court holds that protecting persons with disabilities from abuse, experimentation, and torture is not "a clearly defined and well-recognized public policy."

Despite this clear policy statement in Iowa Code § 225C.1(2), the district court granted the State's motion for summary judgment. The district court agreed with the State that the plaintiffs "did not identify a clearly defined and well-recognized public policy" of the State of Iowa. D0188, M.S.J. Order at 6 (01/04/2023).

The district court held that the plaintiffs' claim failed because "in pleadings, affidavits, and answers to interrogatories, Plaintiffs did not reference any specific statutes or regulations to allege any of the

protected activities." D0188, M.S.J. Order at 5 (01/04/2023). The district court dismissed the plaintiffs' arguments under Iowa Code § 225C.1(1) because this statute did not "make Defendants' alleged action at GRC unlawful." D0188, M.S.J. Order at 6 (01/04/2023).

Incredibly, the district court concluded that the plaintiffs "failed to identify a clearly defined and well-recognized public policy that protected Plaintiffs' reporting, opposing, or refusing to participate in Defendants' actions at GRC." D0188, M.S.J. Order at 6 (01/04/2023). The State's "actions," of course, included illegal and unconstitutional abuse, "experimentation," and torture of persons with disabilities in the care of the State.

The plaintiffs applied to the Supreme Court for permission to appeal in advance of the final judgment under Iowa Rule of Appellate Procedure 6.104(1)(*a*). The Supreme Court denied the application. *Application for Permission to Appeal*, No. 23-0197 (filed Feb. 3, 2023; denied July 3, 2023).

JURISDICTIONAL STATEMENT

The Court has jurisdiction over this appeal under Iowa Rule of Appellate Procedure 6.101(1)(*b*), requiring that "[a] notice of appeal ... be filed in the district court and an informational copy with the supreme court within 30 days after the filing of the final order or judgment."

The district court entered its final judgment granting summary judgment to the defendants on plaintiffs' remaining claims on February 1, 2024, and the plaintiffs filed their notice of appeal with the district court, and an informational copy with the Supreme Court, 28 days later on February 29, 2024.

ARGUMENT

I. The district court erred in holding that the protection of persons with disabilities from abuse, experimentation, and torture while in the State's care is not a "clearly defined and well-recognized public policy" of the State of Iowa.

1. *This issue was raised, preserved, and decided below.*

This issue was preserved for appellate review in the briefing on summary judgment. The State moved for summary judgment claiming that the plaintiffs "failed to identify a well-recognized and clearly defined public policy for wrongful termination in violation of public policy." D0140, S.J. Motion at 2 (11/04/2022). The State's motion did not challenge any other element of a common-law claim for wrongful discharge. D0140, S.J. Motion at 2 (11/04/2022).

In resistance, the plaintiffs argued that Iowa Supreme Court precedent and Iowa statute created "a clearly defined and well-recognized public policy" supporting a common-law claim for wrongful discharge. D0153, M.S.J. Resistance at 8-11 (11/23/2022).

The district court decided this issue in its order granting the State's motion for summary judgment. D0188, M.S.J. Order (01/04/2023). The district court held that the plaintiffs "failed to identify a clearly defined and well-recognized public policy that protected

Plaintiffs' reporting, opposing, or refusing to participate in Defendants' actions at GRC." D0188, M.S.J. Order at 6 (01/04/2023). The district court did not address any other element of the plaintiffs' common-law claim for wrongful discharge.

The plaintiffs timely applied to the Supreme Court for permission to appeal in advance of final judgment. *Application for Permission to Appeal*, No. 23-0197 (filed Feb. 3, 2023; denied July 3, 2023). The Supreme Court denied that application.

2. *The Court reviews for correction of errors at law.*

This Court "review[s] the grant of summary judgment for correction of errors at law" and "look[s] at the summary judgment record in the light most favorable to the nonmoving party." *Rieder v. Segal*, 959 N.W.2d 423, 425-26 (Iowa 2021).

"[T]he existence of a clearly defined and well-recognized public policy that protects the employee's activity .... constitute[s] [a] question[] of law to be determined by the court." *Dorshkind*, 835 N.W.2d at 300; *see also Ackerman v. State*, 913 N.W.2d 610, 615 (Iowa 2018) ("[T]he identification of the public policy to support the tort and on

whether the discharge undermined the policy .... are questions of law for courts to decide.").

3. *The protection of persons with disabilities from abuse, experimentation, and torture while in the State's care is "a clearly defined and well-recognized public policy" under Iowa law, federal law, and the Nuremberg Code.*

A. *Iowa law "emphasize[s] the ability of persons with disabilities to exercise their own choices about the amounts and types of services received."*

The first element of a common-law wrongful-discharge claim—and the only element at issue here—is "the existence of a clearly defined and well-recognized public policy that protects the employee's activity." *Dorshkind*, 835 N.W.2d at 300. "We have recognized the tort of wrongful discharge not only protects the reporting of an activity violative of public policy, but also protects the refusal by an employee to engage in activity that is violative of public policy." *Jasper v. H. Nizam, Inc.*, 764 N.W.2d 751, 767-68 (Iowa 2009).

"The public policy must strike at the heart of a citizen's social rights, duties, and responsibilities before the tort will be allowed. It concerns what is right and just and what affects the citizens of the State collectively." *Thompto v. Coborn's Inc.*, 871 F. Supp. 1097, 1117

(N.D. Iowa 1994), *cited with approval by Berry v. Liberty Holdings, Inc.*, 803 N.W.2d 106, 110 (Iowa 2011).

Consistent with this statement, the Iowa Supreme Court has repeatedly found this standard to be met when it comes to the protection of the most vulnerable Iowans. *See, e.g.*, *Teachout v. Forest City Cmty. Sch. Dist.*, 584 N.W.2d 296, 301 (Iowa 1998) (public policy prevents "adverse employment action on the basis of an employee's intent to report child abuse"); *Dorshkind*, 835 N.W.2d at 304 (there is "a clearly defined and well-recognized public policy to ... ensure the safety of persons residing in assisted living facilities").

Surely protecting persons with disabilities in the State's care from the type of "experimentation" and outright torture that occurred at GRC "concerns what is right and just" and "affects the citizens of the State collectively" just as much as protecting children and the residents of assisted living facilities.

Iowa statute confirms this. "In determining whether a clear, well-recognized public policy exists for purposes of a cause of action, we have primarily looked to our statutes but have also indicated our Constitution to be an additional source." *Fitzgerald v. Salsbury Chem.,*

Inc., 613 N.W.2d 275, 283 (Iowa 2000). Looking to Iowa statute, the Supreme Court has previously held that "a clearly defined and well-recognized public policy" was created by a statute providing "[t]he general assembly finds that **assisted living is an important part of the long-term care continua in this state**." *Dorshkind*, 835 N.W.2d at 304 (quoting Iowa Code § 231C.1) (emphasis in original).

This statute, the Iowa Supreme Court explained, reflects that "[t]he legislature, by including a findings, purpose, and intent provision ... demonstrated a clearly defined and well-recognized public policy to make assisted living available throughout the state **and to ensure the safety of persons residing in assisted living facilities**." *Id.* (emphasis added). As a result, an employee's action attempting to prevent "violations of law that jeopardized the health, safety, and welfare of dementia patients in an assisted living facility, is supported by a clearly defined and well-recognized public policy." *Id.* at 305-06.

Like the statutes at issue in *Dorshkind*, the statutes regarding persons with disabilities in the State's care similarly create "a clearly defined and well-recognized public policy that protects the employee's

activity." *Ferguson v. Exide Techs., Inc.*, 936 N.W.2d 429, 432 (Iowa 2019). The statutes governing the Division of Mental Health and Disability Services (MHDS)—the DHS division operating GRC—express "the intent of the general assembly that the service system for persons with disabilities emphasize the ability of persons with disabilities to **exercise their own choices about the amounts and types of services received**." Iowa Code § 225C.1(2) (emphasis added).

This is why MHDS is charged with "develop[ing] and maintain[ing] policies for the mental health and disability services system." Iowa Code § 230A.101(1). "The policies shall address the service needs of individuals of all ages with disabilities in this state ... and shall be consistent with the requirements of chapter 225C and other applicable law." *Id.*

Just as the statutes at issue in *Dorshkind* demonstrated a clearly defined and well-recognized public policy "to ensure the safety of persons residing in assisted living facilities," 835 N.W.2d at 304, the statutes governing GRC likewise demonstrate a clearly defined and well-recognized public policy protecting persons with disabilities in the State's care. This public policy "emphasize[s] the ability of persons with

disabilities to exercise **their own choices** about" their care under Iowa Code § 225C.1(2). There is no question that the State violated this public policy in conducting "experiments" on GRC residents without their consent—"experiments" that resulted in serious injury and at least one death.

The Court would be in good company recognizing this public policy. Other courts around the country have held that a "clear statutory policy to protect persons under the care of the [State] from harm" created an "explicit, well-defined and dominant public policy against the mistreatment of persons [with mental disabilities] in the [State's] custody." *State v. New England Health Care Emps. Union, Dist. 1199, AFL-CIO*, 855 A.2d 964, 971 (Conn. 2004).

These courts have emphasized that "[p]atient abuse in any form in government operated hospitals is a matter of public concern." *Lenzer v. Flaherty*, 418 S.E.2d 276, 283 (N.C. Ct. App. 1992). Other courts have emphasized that the protection of institutionalized persons, and of human life in general, represents a clear public policy. *See Hausman v. St. Croix Care Ctr.*, 571 N.W.2d 393, 397 (Wis. 1997) ("[T]he plaintiffs have identified a fundamental and well-defined public policy of

protecting nursing home residents from abuse and neglect."); *Kirk v. Mercy Hosp. Tri-Cnty.*, 851 S.W.2d 617, 622 (Mo. Ct. App. 1993) ("[T]he public policy of this state [is] that registered nurses licensed in this state have an obligation to faithfully serve the best interests of their patients."); *Gardner v. Loomis Armored Inc.*, 913 P.2d 377, 384 (Wash. 1996) (en banc) (identifying "public policy of saving persons from life threatening situations").

The State's claims to the contrary—that the protection of persons with disabilities from "experimentation" and torture is not a public policy of the State of Iowa—is as absurd as it is offensive. It is emblematic of the misconduct that underlies this entire case—the complete disregard for the health, safety, and very lives of those in the State's care. Indeed, "[t]here is no public policy more important or more fundamental than the one favoring the effective protection of the lives and property of citizens." *Dorshkind*, 835 N.W.2d at 305.

B. *Federal law protects the constitutional rights of institutionalized persons, including the fundamental "right to bodily integrity."*

Whether "the public policy to support the tort of wrongful discharge in Iowa can be derived from a federal statute" is an open

question under Iowa law. *Fitzgerald*, 613 N.W.2d at 285 n.4. To the extent the Court looks to federal law, it is in accord with the public policy declared in Iowa Code § 225C.1(2).

"The protections of substantive due process have ... been accorded to matters relating to ... the right to bodily integrity." *Albright v. Oliver*, 510 U.S. 266, 272 (1994). "[T]he State has an interest in protecting vulnerable groups—including the poor, the elderly, and disabled persons—from abuse, neglect, and mistakes." *Washington v. Glucksberg*, 521 U.S. 702, 731 (1997).

Nothing demonstrates this more forcefully than the United States Department of Justice report regarding the abuses at GRC. D0185, Decl. Exh. B (Dep. Exh. 46), DOJ Report (12/30/2022). The report constitutes "notice, pursuant to the Civil Rights of Institutionalized Persons Act (CRIPA), 42 U.S.C. § 1997b," that the conditions at GRC "violate the Fourteenth Amendment." D0185, Decl. Exh. B (Dep. Exh. 46), DOJ Report at 1 (12/30/2022); *see Patsy v. Bd. of Regents of State of Fla.*, 457 U.S. 496, 507-08 (1982) (CRIPA "was enacted primarily to ensure that the United States Attorney General has 'legal standing to enforce existing constitutional rights and Federal statutory

rights of institutionalized persons'" (quoting H.R. Conf. Rep. No. 96-897, p.9 (1980))).

There is no question that federal law and the United States Constitution reflect a strong federal public policy protecting institutionalized persons—like the residents of GRC—from the abuse, nonconsensual "experimentation," and torture that occurred at GRC. To the extent the Court looks to federal law as a source of public policy in the State of Iowa, it should reaffirm this public policy.

C. *The law of nations, through the post-Holocaust Nuremberg Code, mandates that "voluntary consent of the human subject is absolutely essential."*

The district court's order also disregards other fundamental policy supporting the protection of vulnerable citizens held in State institutions—the law of nations. The Iowa Supreme Court has previously relied on international laws and norms where appropriate. *See, e.g.*, *Langlas v. Iowa Life Ins. Co.*, 63 N.W.2d 885, 888 (Iowa 1954); *Case v. Olson*, 14 N.W.2d 717, 720 (Iowa 1944); *Hill v. Baker*, 32 Iowa 302, 310 (1871); *Morrison v. Springer*, 15 Iowa 304, 316 (1863).

And "[a]lthough ... international norms [are] not controlling, the [United States Supreme Court] recognized that ... international

authorities have often been regarded as instructive" in various contexts. *State v. Null*, 836 N.W.2d 41, 62 (Iowa 2013) (citing *Roper v. Simmons*, 543 U.S. 551, 574 (2005)). In fact, the United States Supreme Court has emphasized that "[f]or two centuries we have affirmed that the domestic law of the United States recognizes the law of nations." *Sosa v. Alvarez-Machaon*, 542 U.S. 692, 729 (2004).

One of the most influential and foundational sources of the law of nations is that arising from the post-Holocaust Nuremberg Trials. "The medical trials at Nuremberg in 1947 deeply impressed upon the world that experimentation with unknowing human subjects is morally and legally unacceptable." *United States v. Stanley*, 483 U.S. 669, 687 (1987) (Brennan, Marshall, Stevens, JJ., concurring in part and dissenting in part). "In August 1947, Military Tribunal 1, staffed by American judges and prosecutors and conducted under American procedural rules, promulgated the Nuremberg Code as part of the tribunal's final judgment." *Abdullahi v. Pfizer, Inc.*, 562 F.3d 163, 178 (2d Cir. 2009) (internal citation omitted).

"The tribunal emphasized that in every single instance appearing in the record, subjects were used who did not consent to the

experiments." *Id.* (quoting George J. Annas, *The Nuremberg Code in U.S. Courts: Ethics versus Expediency, in The Nazi Doctors and the Nuremberg Code*, 183 (George J. Annas & Michael A. Grodin eds., 1992)) (cleaned up).

For this reason, the "first principle" of the Nuremberg Code is that "[t]he voluntary consent of the human subject is absolutely essential." *Stanley*, 483 U.S. at 687 (Brennan, Marshall, Stevens, JJ., concurring in part and dissenting in part). And "action that contravened the Code's first principle constituted a crime against humanity." *Abdullahi*, 562 F.3d at 179.

Like the Nazi "hydration study" that prompted the need for the Nuremberg Code in the first place, the State's nonconsensual "experimentation" on persons with disabilities in its care disregards the "absolutely essential" element of "voluntary consent of the human subject." Just as the Nazis forced Romani inmates to drink seawater, GRC residents were forced to endure harmful levels of hydration without consent, without regard for their individual needs, and without any medical justification. These residents suffered serious injury and death. The State perpetrated these horrible abuses on the most

vulnerable people in its care all to further Rea's career ambition of making GRC "relevant" as a research institution. D0185, Decl. Exh. B (Dep. Exh. 46), DOJ Report at 5 (12/30/2022).

No matter what source of law this Court looks to, the result is the same. Under Iowa law, federal law, and the law of nations, conducting "experimentation" without consent on persons with disabilities in the State's care—people who do not even have the capacity to consent or ability to resist—violates clearly defined and well-recognized public policy. There is no doubt that preventing this type of abuse "concerns what is right and just and what affects the citizens of the State collectively." *Thompto*, 871 F. Supp. at 1117.

The State's unconscionable argument to the contrary—and the district court's agreement with that argument—is an affront to the rights and dignity of persons with disabilities in the State's care. "No judicially crafted rule should insulate from liability ... involuntary and unknowing human experimentation." *Stanley*, 483 U.S. at 709 (O'Connor, J., concurring in part and dissenting in part).

The State's actions here quite literally constitute "crimes against humanity." The plaintiffs urge the Court to recognize that preventing

such crimes—in the form of nonconsensual "experimentation" and torture of persons with disabilities resulting in serious injury and death—is a clearly defined and well-recognized public policy of the State of Iowa.

CONCLUSION

The plaintiffs respectfully request that the Supreme Court retain this case, reverse the district court's order holding that the protection of persons with disabilities from abuse, nonconsensual "experimentation," and torture is not a clearly defined and well-recognized public policy of the State of Iowa, and remand with instructions for the district court to proceed to a jury trial on the plaintiffs' claims for wrongful discharge in violation of public policy.

REQUEST FOR ORAL SUBMISSION

The plaintiffs request to submit the case with oral argument before the Supreme Court under Iowa Rule of Appellate Procedure 6.903(2)(*a*)(10).

This case presents substantial issues of law and public policy. These issues are of critical importance to the interests of one of the most vulnerable groups of Iowans—persons with disabilities in the care of the State. The Supreme Court's decision in this case will serve as the most consequential and definitive statement of whether the dignity and protection of persons with disabilities is a public policy worth defending.

The State engaged in abhorrent abuses of this vulnerable population. And when the plaintiffs dared to stand up for those who could not speak for themselves, they lost their jobs and their livelihoods. The plaintiffs deserve their day in court—in both the Supreme Court and the district court on remand.

Dated this 20th day of May, 2024.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE WITH TYPEFACE REQUIREMENTS & TYPE-VOLUME LIMITATION

This brief complies with the typeface requirements and type-volume limitation of Iowa Rules of Appellate Procedure 6.903(1)(*d*) and 6.903(1)(*g*)(1) because this brief has been prepared in a proportionally spaced typeface using Century Schoolbook in size-14 font and contains 5,462 words, excluding the parts of the brief exempted by Iowa Rule of Appellate Procedure 6.903(1)(*g*)(1).

Dated this 20th day of May, 2024.

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CERTIFICATE OF SERVICE

I certify that on May 20, 2024, this document was filed in EDMS, which will effect service on the counsel listed below under Iowa Rule of Appellate Procedure 6.702(2) and Iowa Rule of Electronic Procedure 16.315(1)(*b*).

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