IN THE SUPREME COURT OF IOWA
Supreme Court No. 24–0346
Mills County No. LACV027160

KELLY BRODIE, DR. JOHN HEFFRON, KATHERINE KING, DR. MICHAEL LANGENFELD & KATERINE RALL,

Plaintiffs–Appellants,

vs.

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

Defendants–Appellees.

Appeal from the Iowa District Court
For Mills County
The Honorable Craig M. Dreismeier, District Judge

BRIEF FOR APPELLEE

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STATEMENT OF THE ISSUES

I. Whether the district court correctly granted summary judgment to Defendants based on Plaintiffs' failure to properly identify a "clearly defined and well-recognized public policy" for purposes of Iowa's wrongful discharge tort.

ROUTING STATEMENT

This appeal should be transferred to the Iowa Court of Appeals. It presents a straightforward application of Iowa Supreme Court precedent on Iowa's wrongful termination pursuant to public policy tort. Thus, this appeal should be routed to the Iowa Court of Appeals. Iowa R. App. P. 6.1101(3)(a).

NATURE OF THE CASE

Plaintiffs, former employees of the Glenwood Research Center (GRC), appeal whether Defendants wrongfully terminated their employment in violation of public policy. D0001, Petition, ¶¶ 1–6 (11/06/2020); D0032, Answer, ¶¶ 1–6 (03/15/2021); Attachment to D0142, Exhibit A in Support of Defendants' Motion for Summary Judgment, at 1–6 (11/04/2022); D0257, Notice of Appeal (02/29/2024); *see also* Appellants' Brief. But Plaintiffs failed to identify a public policy in the district court that their employment terminations allegedly violated. D0140, Defendants' Motion for Summary Judgment as to Count I (11/04/2022); D0188, Order re: Defendants' Motion for Summary Judgment on Count I of Plaintiffs' Petition (01/04/2023). As a result, the district court granted summary judgment to Defendants on those claims. D0188. Plaintiffs ask this Court to extend vague, unrelated statutory sections to create a cause of action to sue for wrongful termination. *See* Appellants' Brief. This Court should decline.

On November 6, 2020, Plaintiffs sued GRC, the Iowa Department of Human Services (DHS), and supervisory employees at GRC and DHS. D0001. Plaintiffs alleged four counts in their complaint against the cast of Defendants—but only one is raised on appeal: that Defendants wrongfully terminated their employment in violation of public policy. D0001; Appellants' Brief.

Before summary judgment, Plaintiffs identified no public policy to support their wrongful discharge pursuant to public policy claim. D0141, Brief in Support of Defendants' Motion for Summary Judgment on Count I of Plaintiffs' Petition, at 4–9, 11 (11/04/2022).

But Plaintiffs' resistance brief for the first time referenced two broad statutes—Iowa Code sections 225C.1(2) and 230A.101(1)—regarding disability and mental health services. D0153, Resistance to Defendants' Motion for Summary Judgment, at 9–11 (11/23/2022); D0188 at 4. Neither statute was part of the record, nor was either "obligatory or prohibitive in nature" nor "impose[d] a statutory duty on Plaintiffs to oppose or report Defendant' actions." D0188 at 5–6. The district court thus found "no origin for a well-recognized and clearly defined public policy in such vague generalizations." D0188 at 5.

Plaintiffs now appeal the Order granting summary judgment to Defendants on their wrongful termination pursuant to public policy claim only. *See* D0257, Notice of Appeal (02/29/2024); *see also* Appellants' Brief.

STATEMENT OF THE FACTS

Plaintiffs, six former employees at the Glenwood Resource Center (GRC), sued Defendants raising allegations related to their termination. D0001.[1] Plaintiffs' Petition alleges "their employment at GRC was terminated as a result of their participation in protected activities, including reporting their concerns about GRC management." D0188 at 3–4. But rather than address their terminations, Plaintiffs' Petition and factual statement instead allege unrelated GRC wrongdoing that long predates their complaints. For example, Plaintiffs rely on a 2004 U.S. Department of Justice Consent Decree signed years before the events of this case. *See* D0001 at 1–3, 13–22, 24–26; Appellants' Brief at 10–22. The district court focused on the core issue: whether Plaintiffs' termination violated a "clearly defined and well-recognized public policy." D0188 at 1–2; D0254, Ruling on Defendants' Motion for Summary Judgment on Count III, at 1–3 (02/01/2024). Defendants' factual recitation likewise will focus on the employment disputes at the heart of this case.

"The Glenwood Resource Center is a State-owned and -operated facility located in Mills County providing care to individuals with mental and physical disabilities." D0254 at 2; *see also* D0001 ¶ 18; D0032, ¶ 18 . Plaintiffs held various positions at GRC. D0001 ¶¶ 1–6; D0032 ¶¶ 1–6

[1] Only five of those employees are parties to this appeal. *See* D0257.

(03/15/2021); Attachment to D0142, Exhibit A in Support of Defendants' Motion for Summary Judgment, at 1–6 (11/04/2022). In particular:

- Plaintiff Kelly Brodie was employed as an Assistant Superintendent of Treatment Support Services at GRC until her retirement on February 7, 2019. D0001 ¶ 1; D0220, Defendants' Appendix in Support of Summary Judgment on Count III, at 552, 626 (08/03/2023).
- Plaintiff Dr. John Heffron was a GRC staff physician from 2009 through his suspension and termination on March 7, 2018. D0220 at 549, 659.
- Plaintiff Katherine King served in multiple positions during her GRC employment, starting on August 8, 1975, as a social worker. D0001 ¶ 3; D0220 at 554, 629, 445 (9:12–15). When King retired on March 30, 2018, she was serving as a treatment program administrator. D0001 ¶ 3, D0220 at 456 (10:25–11:8), 554, 629.
- Plaintiff Dr. Michael Langenfeld served as a GRC staff physician from September 19, 2008, through March 1, 2018. D0220 at 172 (133:8–18), 632–33. On his last day, Langenfeld sent a resignation letter to then-DHS Director Jerry Foxhoven and walked off the job. D0220 at 172 (133:8–18).
- Plaintiff Katherine Rall was employed as GRC's Director of Quality Management from 2006 through February 12, 2018.

On February 12, 2018, Rall emailed a letter of resignation to Foxhoven. D0220 at 610–11, 717–19.[2]

Plaintiffs raised four counts in their complaint: (1) Defendants wrongfully terminated their employment in violation of public policy (Count I); (2) Defendants conspired to terminate their employment in violation of public policy (Count II); (3) Defendants violated Iowa's whistleblower law (Count III); and (4) Defendants tortiously interfered with the physician-patient relationships of two Plaintiffs (Count IV). D0001 at 42–49. The district court dismissed Plaintiffs' conspiracy and tortious interference claims on February 22, 2021, following a preanswer motion to dismiss. D0029, Order on Defendants' Preanswer Motion to Dismiss (02/22/2021).

Defendants later moved for summary judgment on Plaintiffs' wrongful termination in violation of public policy claim because Plaintiffs did not identify in the record a clearly defined and well-recognized public policy. D0141 at 4–9, 11; Attachment to D0142, Exhibit B in Support of Defendants' Motion for Summary Judgment, at 3–4 (11/04/2022); Attachment to D0142, Exhibit C in Support of Defendants' Motion for Summary Judgment, at 3–4 (11/04/2022); Attachment to D0142, Exhibit D in Support of Defendants' Motion for Summary Judgment, at 4–5

[2] Plaintiffs contend that Brodie, King, Langenfeld, and Rall were constructively discharged. D0001 ¶¶ 1–6. The sixth employee, Plaintiff Jamie Shaw, is not a party to this appeal. *See* D0257.

(11/04/2022); Attachment to D0142, Exhibit E in Support of Defendants' Motion for Summary Judgment, at 4–6 (11/04/2022); Attachment to D0142, Exhibit F in Support of Defendants' Motion for Summary Judgment, at 3–4 (11/04/2022); Attachment to D0142 Exhibit G in Support of Defendants' Motion for Summary Judgment, at 3–5 (11/04/2022).

In their resistance to summary judgment, Plaintiffs raised for the first time two statutes—Iowa Code sections 225C.1(2) and 230A.101(1)—regarding disability and mental health services as the potential public policy that their termination violated. D0153 at 9–11; D0188 at 4. But neither statute "is obligatory or prohibitive in nature" nor "impose[s] a statutory duty on Plaintiffs to oppose or report Defendants' actions." D0188 at 5–6. The district court found "no origin for a well-recognized and clearly defined public policy in such vague generalizations." D0188 at 5.

About a year after the district court granted Defendants summary judgment on Plaintiffs' wrongful discharge claims, the court ordered summary judgment denying Plaintiffs' whistleblower claims. D0254. The district court explained in part that Plaintiffs could not establish a causal connection between their complaints and the end of their employment. *See* D0254 at 13–14, 16–17, 20, 22–23.

Plaintiffs now appeal only the district court order granting summary judgment to Defendants on their wrongful termination in

violation of public policy claim. *See* Appellants' Brief. They have not appealed the district court's dismissal of their whistleblower claims. *See id.*; *see also Hubby v. State*, 331 N.W.2d 690, 694 (Iowa 1983) ("[I]ssues are deemed waived or abandoned when they are not stated on appeal by brief.")

ARGUMENT

I. The District Court correctly granted summary judgment to Defendants because Plaintiffs failed to identify a clearly defined and well-recognized public policy to support their wrongful discharge in violation of public policy claim.

Generally, employees in Iowa may be terminated without cause. "Iowa is an at-will employment state," which means "absent a valid contract of employment, 'the employment relationship is terminable by either party at any time, for any reason, or no reason at all.'" *Berry v. Liberty Holdings, Inc.*, 803 N.W.2d 106, 109 (Iowa 2011) (quoting *Fitzgerald v. Salsbury Chem., Inc.*, 613 N.W.2d 275, 280 (Iowa 2000)). But Iowa has recognized a "narrow exception to the [at-will] doctrine when an employee is fired for reasons that violate a 'clearly defined public policy.'" *Carver-Kimm v. Reynolds*, 992 N.W.2d 591, 598 (Iowa 2023) (quoting *Jasper v. H. Nizam, Inc.*, 764 N.W.2d 751, 761 (Iowa 2009)). An employee pursing a wrongful termination in violation of public policy claim—also referred to as a wrongful discharge tort claim—must establish:

> (1) the existence of a clearly defined and well-recognized public policy that protects the employee's activity; (2) this public policy would be undermined by the employee's discharge from employment; (3) the employee engaged in the protected activity, and this conduct was the reason the employer discharged the employee; and (4) the employer had no overriding business justification for the discharge.

Id. (quoting *Berry*, 803 N.W.2d at 109–10). The first two elements are questions of law for the court to decide. *Fitzgerald*, 613 N.W.2d at 282.

Throughout discovery, Plaintiffs repeatedly failed to identify the "clearly defined and well-recognized public policy" that purportedly supported their wrongful discharge claim and instead broadly referenced "various public policies, state and federal" without naming any one policy. *See* Att. to D0142, Ex. B, at 3; Att. to D0142, Ex. C, at 3; Att. to D0142, Ex. D, at 4; Att. to D0142, Ex. E, at 4; Att. to D0142, Ex. F, at 3; Att. to D0142, Ex. G, at 3. Plaintiffs referenced for the first time in their summary judgment resistance briefing two Iowa statutes upon which their claim supposedly relied. D0153 at 9–11. But those statutes—which appeared only in briefing and not in the factual record—are nothing more than "vague generalizations" that cannot support a wrongful discharge claim. D0188 at 5.

To the extent Plaintiffs base their wrongful discharge claims on complaints of "a violation of law or rule, mismanagement, a gross abuse of funds, an abuse of authority, or a substantial and specific danger to public health or safety," Iowa Code § 70A.28(1), Iowa's statutory whistleblower protections subsume that wrongful discharge claim. *See Ferguson v. Exide*, 936 N.W.2d 429, 434–35 (Iowa 2019). The district court properly granted summary judgment to Defendants on those whistleblower claims in an order Plaintiffs did not appeal. D0254; D0257.

Plaintiffs now attempt to resurrect their wrongful discharge tort claim using those general Iowa laws as well as state court decisions from other jurisdictions, inapposite federal law, and even international principles not presented to the district court. *See* Appellants' Brief. Even granting the broad importance of these general policies and principles, they were not part of the summary judgment record and remain "far too generalized to support an argument for an exception to the at-will doctrine." *See Lloyd v. Drake Univ.*, 686 N.W.2d 225, 230–31 (Iowa 2004).

The district court correctly granted summary judgment to Defendants because Plaintiffs did not identify a "clearly defined and well-recognized public policy" under the requirements of Iowa's wrongful discharge tort. That ruling should be affirmed.

A. Error preservation and standard of review.

The State agrees the parties preserved error on this issue. The State raised this issue in its Motion for Summary Judgment. D0140; D0141 at 2–10. Plaintiff resisted (D0153 at 9–11), and the District Court granted summary judgment in the State's favor on this issue. D0188 at 3–7.

But Plaintiffs did not raise their argument made on appeal that any federal law, international law, or non-Iowa State law created a "clearly defined and well-recognized public policy." D0153 at 9–11. Those arguments are not preserved on appeal. *See Meier v. Senecaut*, 641 N.W.2d 532, 537 (Iowa 2002) ("It is a fundamental doctrine of appellate

review that issues must ordinarily be both raised and decided by the district court before we will decide them on appeal.").

This Court reviews summary judgment rulings for legal error. *Albaugh v. The Reserve*, 930 N.W.2d 676, 682 (Iowa 2019) (citing *Jahnke v. Deere & Co.*, 912 N.W.2d 136, 141 (Iowa 2018)). "Summary judgment is granted when there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." *Lennette v. State*, 975 N.W.2d 380, 388 (Iowa 2022) (quoting Iowa R. Civ. P. 1.981(3)). "A fact is material when its determination might affect the outcome of a suit." *Linn v. Montgomery*, 903 N.W.2d 337, 342 (Iowa 2017) (citing *Walker v. State*, 801 N.W.2d 548, 554 (Iowa 2011)). A genuine issue of material fact exists "when reasonable minds can differ as to how a factual question should be resolved." *Id.*

B. There is no evidence in the summary judgment record of a "clearly defined and well-recognized public policy."

On appeal, Plaintiffs recognize the spare record cannot support their claim and so try to supplement their brief with state court decisions from other jurisdictions, federal law, and international principles. But they did not present those arguments to the district court, so they are not preserved on appeal. *See Meier*, 641 N.W.2d at 537. Even if the Court were to consider Plaintiffs' eleventh-hour policy references part of the record and preserved on appeal, none of these provisions create a "clearly

defined and well-recognized public policy" for purposes of Iowa's wrongful discharge tort.

Iowa Rule of Appellate Procedure 6.10 does not permit appellate courts to consider material that was not before the district court when it entered summary judgment. *First Se. Bank v. McAllister*, 705 N.W.2d 105 (Table), 2005 WL 1397460, at *1 (Iowa Ct. App. June 15, 2005) (citing Iowa R. App. P. 6.10(1)). An appellate court's task is limited to "review [of] the record made in support of and in resistance to the motion to determine whether summary judgment was properly granted." *Hoefer v. Wis. Educ. Ass'n Ins. Tr.*, 470 N.W.2d 336, 339 (Iowa 1991) (citing *Blessing v. Nw. Bank of Marion, N.A.*, 429 N.W.2d 142, 143 (Iowa 1988) and *Fogel v. Trs. of Iowa Coll.*, 446 N.W.2d 451, 454 (Iowa 1989)).

Under Iowa Rule of Civil Procedure 1.981, the summary judgment record consists of "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any." Iowa R. Civ. P. 1.981(3); *see also Carr v. Bankers Tr. Co.*, 546 N.W.2d 901, 903 (Iowa 1996) (explaining summary judgment is based on the "record before the court" and setting forth the items that make up that record); *Schaefer v. Cerro Gordo Cty. Abstract Co.*, 525 N.W.2d 844, 846 (Iowa 1994) (same).

Arguments in briefs or memoranda of authorities are not part of the record on summary judgment. *See Hudson v. Williams, Blackburn & Maharry, P.L.C.*, 763 N.W.2d 276 (Table), 2009 WL 139501, at *4 (Iowa Ct. App. Jan. 22, 2009) ("[S]tatements contained in [plaintiff's] resistance

and statement of disputed facts are not sufficient to defeat the motion for summary judgment.") (citing *Schulte v. Mauer*, 219 N.W.2d 496, 500 (Iowa 1974))); *see also N. Ins. Co. of N.Y. v. Baltimore Bus. Comm'n*, 68 F. App'x 414, 421 (4th Cir. 2003) (holding that a statement in an opposing party's brief does not create an issue of material fact sufficient to defeat summary judgment); *Sardo v. McGrath*, 196 F.2d 20, 23 (D.C. Cir. 1952) ("[M]emoranda of points and authorities . . . are expressly not made part of the record."); *Hecht v. Am. Bankers Ins. Co.*, No. Civ. A. 304CV00098, 2005 WL 2716373, at *3 (W.D. Va. Oct. 21, 2005) (explaining admissions made in counsel briefs cannot be considered on summary judgment because briefs are not part of the record); *United States v. Malkin*, 317 F. Supp. 612, 614 n.6 (E.D.N.Y. 1970) (explaining that "[a] brief cannot be resorted to for the evidentiary matter that must be submitted in summary judgment proceedings). Accordingly, legal arguments without more "do not create a genuine issue of material fact." *Iowa Student Loan Liquidity Corp. v. Heaton*, 947 N.W.2d 232 (Table), 2020 WL 1310321, at *2 (Iowa Ct. App. Mar. 18, 2020) (citing *Hoefer*, 470 N.W.2d at 338).

During discovery, Defendants asked Plaintiffs to "[i]dentify the well-recognized and defined public policy that supports your claim that Defendants wrongfully discharged you in violation of public policy." Att. to D0142, Ex. B, at 3; Att. to D0142, Ex. C, at 3; Att. to D0142, Ex. D, at 4; Att. to D0142, Ex. E, at 4; Att. to D0142, Ex. F, at 3; Att. to D0142, Ex. G, at 3. Plaintiffs responded broadly that they complained about "various

public policies, state and federal, . . . includ[ing] but not limited to . . . laws and policies regarding" alleged mismanagement as well as improper use of funds, experimentation, Medicaid billing, property use, employee harassment, release of employee information, and payroll violations. Att. to D0142, Ex. B, at 3–4; Att. to D0142, Ex. C, at 3–4; Att. to D0142, Ex. D, at 4–5; Att. to D0142, Ex. E, at 4–6; Att. to D0142, Ex. F, at 3–4; Att. to D0142, Ex. G, at 4–5. Defendants provided these generalized interrogatory responses to support their motion for summary judgment. *See* Atts. to D0142. That response is what the record contains about an alleged violation of public policy.

In resistance to summary judgment, Plaintiffs provided: (1) a November 9, 2017 letter documenting Katherine Rall's suspension with pay pending investigation; (2) emails among counsel regarding discovery and deposition dates; and (3) Defendants' Second Supplemental Initial Disclosures. D0154, Declaration of Dwyer Arce, at 4–10. (11/23/2022). Plaintiffs also provided a Declaration from attorney Dwyer Arce purporting to verify the authenticity of the documents. D0154 at 1–3.

But those documents fail to create a genuine issue of material fact. *First*, under Rule 1.981, those documents would need to be properly authenticated and admissible to become part of the summary judgment record. *See Pitts v. Farm Bureau Life Ins. Co.*, 818 N.W.2d 91, 96 (Iowa 2012) (providing court may consider only admissible evidence in evaluating summary judgment); *Cadles of W. Va., LLC v. Midwest*

Biologics, LLC, 977 N.W.2d 125 (Table), 2022 WL 610565, at *4 (Iowa Ct. App. Mar. 2, 2022) (an affidavit has to show someone is competent to testify and provide foundation for admission of documents, including authentication and business record exceptions, for use in summary judgment). Here, Plaintiffs have not established that Mr. Arce can provide the proper foundation for these documents.

Second, even if those documents were properly entered into the record, they are irrelevant because none of the documents references a public policy. *See* D0154 at 1–10. Rather, Plaintiffs presented these documents exclusively to urge the district court to allow more discovery. D0153 at 7, 14–16.

Only Plaintiffs' resistance brief identified any Iowa law purportedly protecting their actions under the wrongful discharge tort. D0153 at 9–11 (citing Iowa Code §§ 225C.1(2) and 230A.101(1)); D0188 at 4. But those arguments are not part of the summary judgment record. *See, e.g.*, *N. Ins. Co. of N.Y.*, 68 F. App'x at 421; *Sardo*, 196 F.2d at 23; *Hecht*, 2005 WL 2716373, at *3; *Malkin*, 317 F. Supp. at 614 n.6; *Heaton*, 2020 WL 1310321, at *2. So even if these statutory provisions created a "clearly defined and well-recognized public policy," they would not save Plaintiffs from summary judgment. This Court could affirm on that ground alone.

C. Plaintiffs have not identified a "clearly defined and well-recognized public policy" that can provide the basis for Iowa's wrongful discharge tort.

The phrase "clearly defined and well-recognized public policy" is a legal term of art in Iowa law, and not all public policies satisfy that definition to create wrongful discharge tort claims. *See Jasper*, 764 N.W.2d at 765. Over more than 35 years and about 100 cases, Iowa courts have outlined which policies are so "clearly defined and well recognized" as to create tort liability and which policies are not. *See Springer v. Weeks & Leo Co.*, 429 N.W.2d 558, 560–61 (Iowa 1988) (en banc) (first recognizing the wrongful discharge tort); *Carver-Kimm*, 992 N.W.2d at 598–602 (discussing history of wrongful discharge tort).

The Supreme Court has explained that "clearly defined and well-recognized" public policies must possess certain characteristics. First, the policy must be "legislatively declared." *Ferguson*, 936 N.W.2d at 432 (citing *Springer*, 429 N.W.2d at 560–61). Second, "broad declaration[s] as to what is 'generally in the public interest . . . [are] too general to serve as the basis for a wrongful discharge claim." *Carver-Kimm*, 992 N.W.2d at 599 (quoting *Dorshkind v. Oak Park Place of Dubuque II, LLC*, 835 N.W.2d 293, 303 (Iowa 2013)). Third, a separate civil cause of action cannot provide exclusive statutory protection for the policy. *See Ferguson*, 936 N.W.2d at 434–35.

Based on those requirements, the list of "clearly defined and well recognized" public policies includes: (1) making workers' compensation claims for work-related injuries under Iowa Code section 85.18, *Springer*, 429 N.W.2d at 560–61; (2) permitting employees to seek partial unemployment benefits under Iowa Code section 96.15(1), *Lara v. Thomas*, 512 N.W.2d 777, 782 (Iowa 1994); (3) permitting an employee to make a demand for wages under Iowa Code section 91A.10(5), *Tullis v. Merrill*, 584 N.W.2d 236, 239 (Iowa 1998); (4) reporting suspected child abuse under Iowa Code sections 232.73 and .75, *Teachout v. Forest City Cmty. Sch. Dist.*, 584 N.W.2d 296, 300–01 (Iowa 1998); (5) providing truthful testimony to avoid violating Iowa Code sections 720.2, .3, .4, *Fitzgerald*, 613 N.W.2d at 282; (6) refusing to violate state-mandated daycare staff-child ratios as set forth in Iowa Admin Code r. 441-109.8, *Jasper*, 764 N.W.2d at 767; (7) reporting forgery of dementia training certifications required under Iowa Code sections 231C.14(1), (3), *Dorshkind*, 835 N.W.2d at 303; and, most recently, (8) performing a statutory duty to fulfill proper public records requests under Iowa Code section 22.3(1), *Carver-Kimm*, 992 N.W.2d at 602.

But even after more than a third of a century, that list remains short. That makes sense because "as laudable and socially desirable as [an] activity may be," a given law likely does not create a "well recognized and clearly defined public policy." *Arispe v. Walgreens Co.*, 759 N.W.2d 812 (Table), 2008 WL 4724749, at *5 (Iowa Ct. App. Oct. 29, 2008). That

reality does not make other policy goals less important, it only means they do not entitle a plaintiff to damages under the wrongful-discharge tort.

Plaintiffs overlook the term's legal requirements. Instead, they assert that because a statute "'concerns what is right and just' and 'affects the citizens of the State collectively'" it must be a "clearly defined and well-recognized public policy." Appellants' Brief at 27. That misstates the law. "In [Plaintiffs'] view, if [they were] fired . . . because [they] had done anything that, in a jury's view, furthered [a] general policy . . . they can sue for tort damages." *See Carver-Kimm*, 992 N.W.2d at 599. "That position is untenable and would be inconsistent with [Iowa] precedent." *Id.* Plaintiffs' stance has been recently rejected by this Court and would eviscerate Iowa's at-will employment doctrine. This Court should reject that position.

1. A "clearly defined and well-recognized public policy" must be based on an Iowa legislative enactment.

From the first case recognizing the common law wrongful discharge claim, the Supreme Court has held that the wrongful discharge tort exists "to advance a *legislatively declared* goal." *Springer*, 429 N.W.2d at 561 (citing *Brockmeyer v. Dun & Bradstreet*, 335 N.W.2d 834, 842 (Wis. 1983)) (emphasis added); *see also Ferguson*, 936 N.W.2d at 432 ("Our reasoning for adopting the wrongful-discharge claim focused on the need to provide a remedy for conduct that violated legislatively declared public

policy" (citing *Springer*, 429 N.W.2d at 560–61)). As such, when identifying a "clearly defined and well-recognized public policy," the Supreme Court looks to Iowa statutes, Iowa's Constitution, and Iowa administrative regulations "adopted pursuant to a delegation of authority in a statute that seeks to further a public policy." *Dorshkind*, 835 N.W.2d at 303 (quoting *Jasper*, 764 N.W.2d at 764) (citation omitted).

Limiting the wrongful-discharge tort to Iowa's "legislatively declared goals" as "articulated in a statutory scheme" serves multiple purposes. *Springer*, 429 N.W.2d at 561. *First*, it prevents courts from interfering with "matter[s] which should be left to the legislature." *Id.* *Second*, it "emphasizes [Iowa's] continuing general adherence to the at-will employment doctrine and the need to carefully balance the competing interests of the employee, employer, and society." *Fitzgerald*, 613 N.W.2d at 283 (citing *Fogel*, 446 N.W.2d at 455 and 82 Am. Jur. 2d Wrongful Discharge § 15, at 687–88 (1992)). *Third*, it "helps provide the essential notice to employers and employees of conduct that can lead to dismissal, as well as conduct that can lead to tort liability." *Jasper*, 764 N.W.2d at 763 (citing *Fitzgerald*, 613 N.W.2d at 282).

In short, "[t]he legislature is the branch of government responsible for advancing public policy, and courts can be assured that the tort is advancing 'a legislatively declared goal' when public policy is derived from a statute." *Id.* at 763–64 (quoting *Springer*, 429 N.W.2d at 561); *see also id.* at 763–64 (Iowa administrative regulations "can reflect the

objectives and goals of the legislature in the same way as a statute"). Conversely, "public policy cannot be derived from internal employment policies or agreements" because they do not have the force of law. *Id.* at 762 (citing *Davis v. Horton*, 661 N.W.2d 533, 536 (Iowa 2003) (holding that employee handbook cannot provide a cause of action for wrongful discharge pursuant to public policy)).

For the first time on appeal, Plaintiffs urge this Court to look beyond Iowa's Constitution, statutes, and regulations and extend Iowa's wrongful discharge tort to policies set by other States, Congress, or the international community. *See* Appellants' Brief at 30–37 (referencing state court decisions, the Civil Rights of Institutionalized Persons Act, substantive due process, and the Nuremberg Code). But Iowa's Legislature did not declare public policy through those enactments or policies. And Plaintiffs referenced none of those policies in summary judgment briefing—much less in the summary judgment record—so they are not proper grounds for appellate review. *See Meier*, 641 N.W.2d at 537.

Plaintiffs ask the Court to allow other States' legislatures to set Iowa's public policy. *See* Appellants' Brief at 30–31 (citing *State v. New England Health Care Emps. Union Dist. 1199, AFL-CIO*, 855 A.2d 964, 971 (Conn. 2004); *Hausman v. St. Croix Care Ctr.*, 571 N.W.2d 393, 397 (Wis. 1997); *Gardner v. Loomis Armored, Inc.*, 913 P.2d 377, 384 (Wash. 1996); *Kirk v. Mercy Hosp. Tri-Cnty.*, 851 S.W.2d 617, 622 (Mo. Ct. App.

1993); *Lenzer v. Flaherty*, 418 S.E.2d 276, 283 (N.C. Ct. App. 1992)). But Iowa courts have never granted other States such power, nor does Iowa's Constitution allow it. *See* Iowa Const. Art. III, Legislative Dep't, § 1 (vesting the State's legislative authority in Iowa's General Assembly).

Even if this Court allowed other States' legislatures to create Iowa policies, none have recognized wrongful discharge torts based on the broad policies Plaintiffs assert. *See, e.g.*, *New England Health*, 855 A.2d at 970–71 (holding that arbitration award in union grievance claim based on alleged patient abuse did not violate that State's "explicit, well-defined public policy"); *Hausman*, 571 N.W.2d at 396–97 (limiting the "public policy exception" to cases "where the employee is terminated for refusing a command, instruction, or request of the employer to violated public policy as established in existing law"); *Gardner*, 913 P.2d at 384 ("focusing on the narrow public policy" of saving lives from immediate life-threatening situations but holding a broader "good samaritan doctrine does not embody a public policy important enough to override an employer's legitimate interest in workplace rules").

In Iowa, "weighing . . . policy interests is for the general assembly." *Teig v. Chavez*, --- N.W.3d ----, 2024 WL 2869282, at *10 (Iowa June 7, 2024) (citing *City of Sioux City v. Greater Sioux City Press Club*, 421 N.W.2d 895, 897 (Iowa 1988)). Such weighing is not the province of other governmental bodies. *See AFSCME Iowa Council 61 v. State*, 928 N.W.2d 21, 26 (Iowa 2019) (it is not the court's role "to sit as a superlegislature").

Courts are to "hew[] to the policy choice embraced by the Iowa legislature" and "not substitute a federal legislative choice made as a result of a materially different policy process that produced a substantially different legislative result." *Simon Seeding & Sod, Inc. v. Dubuque Human Rights Comm'n*, 895 N.W.2d 446, 475 (Iowa 2017) (Appel, J., concurring specially). Plaintiffs nonetheless ask this Court to do just that. *See* Appellants' Brief at 30–37.

The Court should decline Plaintiffs' invitation to supplant Iowa's Legislature. The proper inquiry is whether Iowa has created a "clearly defined and well-recognized public policy" in this case. And Iowa has not done so.

2. Not all Iowa laws create "clearly defined and well-recognized" public policies for purposes of Iowa's wrongful discharge tort.

"Any effort to evaluate the public policy exception with generalized concepts of fairness and justice will result in an elimination of the at-will doctrine itself. Moreover, it could unwittingly transform the public policy exception into a 'good faith and fair dealing' exception, a standard [Iowa has] repeatedly rejected." *Lloyd*, 686 N.W.2d at 230 (quoting *Fitzgerald*, 613 N.W.2d at 283). Iowa courts "cautiously identify policies to support an action for wrongful discharge under the public-policy exception." *Dorshkind*, 835 N.W.2d at 303. Accordingly, courts "'*will only extend such recognition to those policies that are well recognized and clearly*

defined.' . . . Only such policies are weighty enough 'to overcome the employer's interest in operating its business in the manner it sees fit,' which we have long and vigorously protected." *Lloyd*, 686 N.W.2d at 229 (quoting *Davis*, 661 N.W.2d at 536 and *Fitzgerald*, 613 N.W.2d at 282). Thus Courts "cannot find a well recognized and clearly defined public policy" in "vague generalizations." *Id.* at 230.

As a result, "[e]ven if an employee identifies a statute as an alleged source of public policy, it does not necessarily follow that the statute supports a wrongful discharge claim." *Berry*, 803 N.W.2d at 110 (citing *Jasper*, 764 N.W.2d at 765). The relevant statute must either "expressly protect[] a specific employment activity from retaliation by the employer" or "clearly imply . . . the specific employment activity in question [is protected] from employer retaliation." *Id.* at 111. While "[t]here need not be an express statutory mandate of protection," *Teachout*, 584 N.W.2d at 300, at minimum, the statute must explicitly recognize that an employer's retaliatory discharge following a specific employee activity would "conflict with" achievement of a legislative goal, *Lara*, 512 N.W.2d at 782. In other words, the statute must contain language to "clearly imply the statute protects the specific employment activity in question from employer retaliation." *Berry*, 803 N.W.2d at 111.

The Supreme Court has identified four categories of statutorily protected activities that give rise to a "clearly defined and well-recognized public policy. *See Ackerman v. State*, 913 N.W.2d 610, 615 (Iowa 2018).

Those categories are: (1) exercising a statutory right or privilege; (2) refusing to commit an unlawful act; (3) performing a statutory obligation; and (4) reporting a statutory violation. *Id.* Each of those categories requires an express statutory grant or prohibition. *See id.* Accordingly, the Supreme Court has repeatedly held that a "broad declaration[s] as to what is 'generally in the public interest' . . . [are] too general to serve as the basis for a wrongful discharge claim." *Carver-Kimm*, 992 N.W.2d at 599 (quoting *Dorshkind*, 835 N.W.2d at 303).

Yet Plaintiffs point to broad declarations of the public interest about community health and disability services. *See* Appellants' Brief at 28–30 (citing Iowa Code §§ 225C.1(2) and 230A.101(1)). Those statutes generally state legislative purpose. *See* Iowa Code §§ 225C.1(2), 230A.101(1). So they are unlike the four categories above.

For example, section 225C.1 broadly declares that "[i]t is 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). And section 230A.101 instructs the Department of Health and Human Services "to develop and maintain 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.* But neither

law sets forth specific policies that mandate or prohibit any conduct in a way that this Court has recognized as actionable.

Plaintiffs do not point to any part of either broader *chapter* in which those sections are placed to support their wrongful termination tort claim—nor could they. Chapter 230A designates mental health service areas (Iowa Code §§ 230A.103, .104), identifies the target population for mental health services (Iowa Code § 230A.105), sets forth the general types of mental health services to be provided (*id.* § 230A.106), provides for the release of demographic information (*id.* § 230A.108), and delegates the creation of standards and accreditation to the Department of Health and Human Services (*id.* §§ 230A.110, .111).

Plaintiffs' claims raised under chapter 225C fare no better. Chapter 225C sets forth broadly defined departmental duties but does not mandate or prohibit any conduct. *See* Iowa Code § 225C. For example, Iowa Code section 225C.4 instructs the Department to "[a]ssist" state and regional governing boards, "[e]mphasize" evidence based services, "[e]ncourage and facilitate" research and educational activities, "[c]oordinate" services with state mental health institutes and resource centers, "[a]dminister" state programs and appropriations, "[e]stablish and maintain" a data collection and management system, "[p]repare a budget and reports of the department's activities," "[r]ecommend" minimum standards for accreditation and services," and "[e]stablish suitable agreements . . . to encourage appropriate care and facilitate the

coordination of disability services." Iowa Code § 225C.4. But the law does not outline any specific actions the Department must take to fulfill these tasks. *See id.*

Meanwhile, section 225C.6 instructs the Mental Health and Disability Services Commission to "[a]dvise" the department on administration and "[a]dopt standards" for mental health services and programs but does not itself impose any standards. Iowa Code § 225C.6. In short, Plaintiffs' late-raised laws do not mandate or prohibit activity that is protected from retaliation and could create a wrongful discharge tort. *See Berry*, 803 N.W.2d at 110; *see also Dorshkind*, 835 N.W.2d at 293 (Mansfield, J., concurring in part and dissenting in part).

Plaintiffs nonetheless assert societal importance of protecting persons with disabilities to justify their claims. But the Supreme Court has rejected the argument that vague principles can support a wrongful discharge tort claim. *See Lloyd*, 686 N.W.2d at 230–31. In *Lloyd*, "[t]he gist of Lloyd's argument [was] that because upholding criminal laws is important and socially desirable conduct, this court should find a public-policy exception to the at-will employment doctrine for a private security guard who tried to effectuate an arrest of a suspected criminal." *Id.* at 630. The Court "ha[d] little quarrel" with the premise that "the criminal laws of the state reflect a general public policy against crime and in favor of the protection of the public." *Id.* But that public policy was "far too

generalized to support an argument for an exception to the at-will doctrine. In short, the public policy is not *clearly defined*." *Id.*

Like *Lloyd*, Plaintiffs' argument consists of generalizations about protections for persons with disabilities and "vulnerable Iowans." *See, e.g.*, Appellants' Brief at 21, 26–31. Based on Plaintiffs' logic, any Department employee who is terminated thus has a common-law claim for wrongful termination based on any disagreement with management. The wrongful discharge tort requires more. *See Carver-Kimm*, 992 N.W.2d at 599 ("If Carver-Kimm's position were correct, then a department spokesperson would have absolute job protection whenever they told or gave the media anything so long as the information would be traced to a public record. That could lead to chaos in state government.").

Indeed, the Supreme Court reaffirmed *Lloyd* just last year, rejecting a broadly defined wrongful discharge tort. *See Carver-Kimm*, 992 N.W.2d 591. There, a former department communications officer argued that furthering the general policy supporting the "free and open examination of public records" allowed her to pursue a wrongful discharge tort claim. *Id.* The Court rejected that proposed policy as overboard. *Id.* The Court found a clearly defined public policy based only on a more specific statutory duty. *Id.* The Court held that as a custodian of records, plaintiff "was under a statutory duty to fulfill proper requests for public records." *Id.* (citing Iowa Code § 22.3(1) and *Belin v. Reynolds*, 989 N.W.2d 166, 174–75 (Iowa 2023)). So the plaintiff could maintain a

wrongful discharge action "if, and only if, she [could] show she was terminated for complying with her statutory duty as lawful custodian to produce records that she had an obligation to produce." *Id.* at 602.

Indeed, the requirement for a legislative mandate or prohibition was well-established before last year. About three decades before *Carver-Kimm* and a decade before *Lloyd*, the Court based the existence of the wrongful discharge tort on a law expressly voiding agreements to "waive, release, or commute the individual's right to [unemployment] benefits." *Lara*, 512 N.W.2d at 782 (quoting Iowa Code § 96.15(1)). The Court found that retaliatory discharge would frustrate an employee's statutory rights under section 96.15(1) specifically. That meant this Court did not create a cause of action under Iowa's unemployment insurance laws more broadly. *See id.* (quoting Iowa Code §§ 96.2, .15(1)).

Likewise, in *Teachout*, while the Legislature found that "[c]hildren in this state are in urgent need of protection from abuse," the Court based the wrongful discharge claim on law creating immunity for child abuse reporting and imposing penalties on mandatory reporting failures. 584 N.W.2d at 300–01.

Most recently, in *Dorshkind*—on which Plaintiffs heavily rely—the Court noted "the legislature's findings, purpose, and intent" in enacting Iowa's assisted living statutes can suggest a possible public policy. *See* 835 N.W.2d at 304. But the Court's decision—and the existence of the wrongful discharge tort—required more. *Id.* at 305. A "clearly defined

and well-recognized" public policy turned on express administrative rules "requir[ing] the implementation of a training program with accompanying state-mandated training documents to safeguard dementia patients' health, safety, and welfare." *Id.*

Even other States allegedly recognizing "the protection of institutionalized persons, and of human life" as "a clear public policy," Appellants' Brief at 30, base those holdings on statutes without analogue in Iowa law. *See, e.g.*, *New England Health*, 855 A.2d at 971 & n.6 (public policy based on statutes creating state registry of employees terminated for abuse or neglect and prohibiting the hiring or retention of employees on the registry); *Hausman*, 571 N.W.2d at 97 (public policy based on statutes expressly prohibiting retaliation against or discharge of employees who report neglect and on statute imposing criminal penalties on workers who knowingly permit abuse or neglect); *Kirk*, 851 S.W.2d at 622 (public policy based on licensing statutes expressly creating professional duty and providing liability for failure to comply with that duty); *Lenzer*, 418 S.E.2d at 287 (public policy based on statute imposing duty to report).

Indeed, if Plaintiffs were correct, *Jasper*, would have been much shorter. 764 N.W.2d 751. There, Iowa statutes authorized the Department of Human Services to "'adopt rules setting minimum standards to provide quality child care in the operation and maintenance' of day-care facilities." *Id.* at 765 (quoting Iowa Code § 237A.12(1)). The

Legislature also had "specifically authorized the department to adopt rules regulating '[t]he number . . . of personnel necessary to assure the health, safety, and welfare of children in the facilities.'" *Id.* (quoting Iowa Code § 237A.12(1)(a)). But if those statutory provisions could create a "clearly defined and well-recognized" public policy, then the Court would not have needed to decide whether administrative regulations setting staff-to-child ratios could "serve as a source of public policy to give rise to a claim of wrongful discharge from employment." *Id.* at 757. Iowa Code section 237A.12 itself would have sufficed.

Requiring an express statutory grant or prohibition prevents the wrongful discharge tort from swallowing Iowa's important at-will employment doctrine. It also prevents courts from substituting their policy views for the Legislature's. *See Garrison v. New Fashion Pork, LLP*, 977 N.W.2d 67, 85 (Iowa 2022) ("[I]t is not our role to second-guess the legislature's policy choices."); *Boyer v. Iowa High Sch. Athletic Assoc.*, 127 N.W.2d 606, 612 (Iowa 1964) ("The legislature, not the courts, ordinarily determines the public policy of the state.") (citations omitted).

That does not mean that other public policies are unimportant. Indeed, Plaintiffs' suggestions that the protection of persons with disabilities is not a matter of public concern in Iowa "is as absurd as it is offensive." Appellants' Brief at 31. But Iowa courts recognize that the wrongful discharge tort is not meant to create a cause of action whenever a plaintiff suffers an adverse employment action. As Justice Mansfield

explained in his partial dissent in *Dorshkind*, "there are myriad laws and regulations relating to 'health, safety, and welfare.' There also are many types of violations, ranging from the serious to the trivial." 835 N.W.2d at 331 (Mansfield, J., concurring in part and dissenting in part). But if the Court "make[s] the tort available whenever and employee brings an alleged health, safety, or welfare violation . . . we truly have changed the nature of that tort in Iowa." *Id.*

As a result, some public policies, like crime prevention, due process, the presumption of innocence, the sanctity of marriage are important, but too vague to entitle a plaintiff to damages under the wrongful discharge tort. *See, e.g.*, *Lloyd*, 686 N.W.2d at 231 (holding that crime prevention is not "a clear and well recognized public policy of this state"); *Hahn v. Stock*, No. 95-1841, 1996 WL 870828, at *3 (Iowa Ct. App. Dec. 20, 1996) (rejecting argument that termination following the end of an in-office extramarital affair violated "the public policy to preserve sanctity of marriage"); *Borshel v. City of Perry*, 512 N.W.2d 565, 568 (Iowa 1994) (holding that neither statutory presumption of innocence or constitutional due process "impl[y] a public policy in the employment context"). And other policies simply are protected through statutes rather than the wrongful discharge tort, like civil rights, Iowa Code § 216, and State employee whistleblowing.

3. Complaints about violations of laws, mismanagement, abuse of funds or authority, or dangers to public health and safety provide causes of action under Iowa's whistleblower statute not its wrongful discharge tort.

Iowa's whistleblower statue created for Plaintiffs a statutory remedy that precludes the wrongful discharge tort. *See* Iowa Code § 70A.28. Iowa's whistleblower statute protects a State employee from termination when that employee reasonably discloses some types of information relating to a violation of law to certain persons. Iowa Code § 70A.28(2). If the State terminates an employee for making such disclosures, section 70A.28 gives statutory relief, including "restatement, with or without back pay, or any other equitable relief the court deems appropriate, including fees and costs." Iowa Code § 70A.28(5)(a). The existence of such a remedy precludes Plaintiffs' tort claim.

The Supreme Court has held that a common law wrongful-discharge claim is not available when Iowa law already creates a statutory remedy for the same conduct. *Ferguson*, 936 N.W.2d at 430. "In this situation, the 'legislature has weighed in on the issue and established the parameters of the governing public policy.'" *Id.* at 435 (quoting *Harvey v. Care Initiatives, Inc.*, 634 N.W.2d 681, 686 (Iowa 2001)).

In those cases, even the strongest public policies do not create common law wrongful discharge claims. For example, "[i]t is clear beyond

any doubt that our law protects women from crude and demeaning language and conduct," including "graphic descriptions of fantasized sexual conduct and the circulations of false rumors regarding a meretricious association [and] six instances of inappropriate touching." *Greenland v. Flatiron Corp.*, 500 N.W. 36, 37 (Iowa 1993). But that policy does not create a common-law claim where the Iowa Civil Rights Act creates an explicit statutory remedy. *Id.* at 38.

According to Plaintiffs' interrogatory responses, Plaintiffs contend Defendants "violated or threatened to violate" "state and federal law" as well as "[l]aws and policies regarding" "mismanagement of the GRC facility," "the improper use, waste, and fraudulent non-disclosure of expenditures of state and federal taxpayer dollars," "improper Medicaid Cost Reporting," "unlawful harassment . . . and creation and operation of a hostile work environment," and "interference with independent medical judgment of physician . . . and . . . with an investigation by the Iowa Board of Medicine." *See* Att. to D0142, Ex. B, at 3–4; Att. to D0142, Ex. C, at 3–4; Att. to D0142, Ex. D, at 4–5; Att. to D0142, Ex. E, at 4–6; Att. to D0142, Ex. F, at 3–4; Att. to D0142, Ex. G, at 4–5.

In other words, Plaintiffs claim they were terminated for complaining about violations of State and federal law, mismanagement, abuse of funds, abuse of authority, and danger to public health or safety. Such complaints fall squarely under Iowa's Whistleblower statute. *See* Iowa Code § 70A.28(2). Thus those complaints cannot create a wrongful-

discharge claim because the law already provides a statutory remedy. *See Ferguson*, 936 N.W.2d at 430.

The statutory remedy further distinguishes *Dorshkind*. *See* Appellants' Brief at 27–30 (arguing that the public policies at issue here are like *Dorshkind*, 835 N.W.2d at 304). *Dorshkind*'s plaintiff was a private sector employee without the whistleblower protections available to Plaintiffs here. *See* 835 N.W.2d at 296 (explaining the corporate ownership of the Oak Park facility).

Indeed, Plaintiffs availed themselves of Iowa's whistleblower statute. Plaintiffs' Petition alleged both that Defendants wrongfully terminated their employment in violation of public policy and that Defendants violated Iowa's whistleblower law. D0001 at 42–49. The district court granted summary judgment to Defendants on Plaintiffs' whistleblower claim following a separate summary judgment motion about one year after it dismissed Plaintiffs' wrongful discharge tort claim. *See* D0254. Plaintiffs did not appeal the dismissal of their whistleblower claim, *see* Appellants' Brief, and Plaintiffs have forfeited that claim on appeal. *See Hubby*, 331 N.W.2d at 694 ("[I]ssues are deemed waived or abandoned when they are not stated on appeal by brief.").

Even though the district court did not rule on Defendants' preclusion argument on summary judgment, the Court can affirm "on a ground not relied upon by the district court provided the ground was urged in that court and is also urged on appeal." *Veatch v. City of Waverly*,

858 N.W.2d 1, 7 (Iowa 2015). To be sure, the district court addressed the issue in ruling on Defendants' preanswer motion to dismiss, finding that section 70A.28 did not preclude Plaintiffs' common law wrongful discharge claim. D0029 at 3. But the court based that ruling on a misreading of the statute and this Court's decisions.

The district court found that section 70A does not create an exclusive remedy because it "contains the permissive language 'may.'" (D0029 at 3). But as the Supreme Court explained in *Walsh v. Wahlert*, the term "may" simply provides employees with a choice between pursing statutory remedies under section 70A and administrative remedies under chapter 17A. 913 N.W.2d 517, 525 (Iowa 2018); *see also* Iowa Code § 70A.28(6) (stating that the administrative procedures of chapter 17A provide an alternate remedy). The term does not give employees a choice between a statutory remedy and a common law tort.

The district court's reliance on *Ackerman v. State* failed to recognize subsequent legal developments that found that a statute can impliedly preempt a common law remedy even in the absence of "mandatory language." *Ferguson*, 936 N.W.2d at 436–36. So while this Court in *Ackerman* explained that "[s]ection 70A.28 does not expressly declare that its remedies are the exclusive vehicle for state employees to recover for a wrongful discharge in retaliation of whistleblowing," D0029 at 3 (quoting *Ackerman v. State*, 913 N.W.2d 610, 622 (Iowa 2018)), that was not the full story. *Ackerman* did not address whether section 70A.28

impliedly preempts wrongful discharge claims. *Id.* That issue was not preserved for appeal. *See id.* The district court erred in applying "the ruling in *Ferguson*" when it held section 70A.28 did not preempt a common law wrongful discharge claim. *See* D0029 at 3.

In Reply, Plaintiffs may renew their argument that they brought a wrongful discharge claim "based on other protected conduct beyond that protected by § 70A.28. D0153 at 12. But Plaintiffs failed to provide any evidence of "protected conduct" beyond "numerous complaints" and "object[ions] to Defendants' . . . actions." D0153 at 12–14 (citing Att. to D0142, Ex. B, at 3–5; Att. to D0142, Ex. C, at 3–5; Att. to D0142, Ex. D, at 3–5; Att. to D0142, Ex. E, at 3–5; Att. to D0142, Ex. F, at 3–5; Att. to D0142, Ex. G, at 3–5.

Plaintiffs' case is thus distinct from *Carver-Kimm*. *Cf.* 992 N.W.2d at 591. There, the plaintiff's wrongful discharge claim was based on her release of government documents in response to public records requests while her whistleblower claim was based on her complaints to human resources about alleged department misconduct. 992 N.W.2d at 602, 606. Plaintiffs have not provided evidence of a similar distinction here.

Put simply, Section 70A.28 displaces Plaintiffs' wrongful discharge tort claim. "If the legislature considers the remedies it has provided inadequate, it is free to modify them. However, [the court] need not provide an alternative court remedy when the legislature already has

provided one." *Ferguson*, 936 N.W.2d at 435. The district court therefore correctly granted summary judgment to Defendants.

CONCLUSION

This Court should affirm the district court's grant of summary judgment to the State.

REQUEST FOR ORAL SUBMISSION

Defendants request to be heard in oral argument.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This brief complies with the typeface requirements and type-volume limitation of Iowa Rs. App. P. 6.903(1)(g) and 6.903(1)(i)(1) because this brief has been prepared in a proportionally spaced typeface using Century Schoolbook in size 14 and contains 8,392 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(i)(1).

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CERTIFICATE OF FILING AND SERVICE

I hereby certify that on the 19th day of July, 2024, I, or a person acting on my behalf, filed this brief and served it on counsel of record to this appeal via EDMS.

/s/Adam Kenworthy
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