IN THE SUPREME COURT OF IOWA

SUPREME COURT NO. 18-1464
Polk County No. CVCV052834

TYLER DIX, JASON CATTELL, JIMMY MCCANN, and JULIE ELLER,
Plaintiffs-Appellees/Cross-Appellants,

v.

CASEY'S GENERAL STORES, INC. and CASEY'S MARKETING COMPANY,
Defendants-Appellants/Cross-Appellees.

APPEAL FROM THE IOWA DISTRICT COURT
FOR POLK COUNTY
HONORABLE MICHAEL D. HUPPERT, DISTRICT COURT JUDGE

APPLICATION FOR FURTHER REVIEW BY DEFENDANTS-APPELLANTS/CROSS-APPELLEES CASEY'S GENERAL STORES, INC. and CASEY'S MARKETING COMPANY OF COURT OF APPEALS DECISION DATED JANUARY 9, 2020

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QUESTIONS PRESENTED FOR FURTHER REVIEW

1. Did the Court of Appeals err in holding that an employer's designation of an employment position as "safety-sensitive" for purposes of random pool drug testing under Iowa Code § 730.5(8)(a)(3) can be supplanted by the Court's interpretation of whether the positions' job duties alone are "safety sensitive"?

2. Did the Court of Appeals err in holding that the statutory immunity for private employers under Iowa Code § 730.5(11) only applies to a cause of action based on third-party conduct, despite an absence of such language from the statutory immunity provision?

3. Did the District Court err in affirming awards of back pay and/or front pay as equitable remedies under the language of Iowa Code § 730.5(15)(a)(1) when Appellant/Cross-Appellee McCann withdrew an application for an employment position and Appellant/Cross-Appellee Eller admittedly failed to seek any employment after they were terminated from employment?

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STATEMENT SUPPORTING FURTHER REVIEW

Pursuant to Iowa Rule of Appellate Procedure 6.1103(1)(b), Defendants–Appellants/Cross–Appellees Casey's General Stores, Inc. and Casey's Marketing Company ("Casey's") request this Court grant its application for further review of the Iowa Court of Appeals' decision filed on January 9, 2020 pursuant to Iowa Rules of Appellate Procedure 6.1103(1)(b)(2) and (4). Casey's requests such further review because the Court of Appeals erred in its statutory interpretation of three provisions of Iowa Code § 730.5, the Iowa private sector drug-free workplaces statute, which has rarely been interpreted by this Court but has broad public importance.

Iowa Code § 730.5 occupies over nine pages in the Iowa Code, and is according to this Court, a "linguistic jungle." *Walsh v. Wahlert*, 913 N.W.2d 517, 521 (Iowa 2018). The Court of Appeals in this case described 730.5 as "byzantine"—i.e., excessively complicated and involving a great deal of administrative detail. (Opinion, p. 11). The meaning and mechanics of the three provisions in § 730.5 on which Casey's seeks further review involve "important question[s] of law that ha[ve] not been, but should be, settled by the supreme court" in order to allow Iowa private employers and employees to navigate this complicated law and its ramifications. Iowa R. App. P.

6.1103(1)(b)(2). The patchwork of District Court and Court of Appeals decisions on the meaning of Iowa Code § 730.5's provisions create uncertainty for private sector employers and employees and is a broad public policy issue in the State of Iowa; guidance from the Iowa Supreme Court is needed. *See* Iowa R. App. P. 6.1103(1)(b)(4). The areas on which Casey's seeks further review are outlined below.

First, Casey's designated employees McCann and Eller as holding "safety sensitive" positions due to their work environment in a Casey's warehouse, which made them subject to random pool drug testing under Iowa Code § 730.5(8)(a)(3). The Court of Appeals, in contravention of the language of Iowa Code §§ 730.5(8)(a)(3) and 730.5(9)(f), usurped Casey's judgment in making this designation by finding that the Court's own determination of whether McCann and Ellers' job duties rendered them "safety sensitive" was instead controlling. In reaching this result, the Court of Appeals rewrote the statutory definition of "safety–sensitive" and invalidated McCann's confirmed positive drug test result and Eller's decision to leave employment without being tested, resulting in an award of equitable remedies to both.

Second, the Court of Appeals, in a novel matter of statutory interpretation, held that the employer immunity provision of Iowa Code

§ 730.5(11) only applies to the actions of *third parties* outside the employer's control. This interpretation reads a condition into employer immunity which does not exist within the plain language of the statute and precludes broader employer immunity consistent with the language of Iowa Code § 730.5(11).

Third, the Court of Appeals erroneously misapplied Iowa Code § 730.5(15)(a)(1) to uphold equitable remedies for McCann, who withdrew an application for an employment position, and Eller, who admittedly failed to seek any employment, after their terminations from employment with Casey's. It is against broader equitable principles and the intent of Iowa Code § 730.5 to permit such equitable remedies for terminated employees who admittedly test positive for illegal drugs or refuse a drug test, and fail to reasonably mitigate those wages and benefits.

BRIEF IN SUPPORT OF REQUEST FOR FURTHER REVIEW

I. FACTUAL AND PROCEDURAL BACKGROUND

This case was commenced as four separate civil actions under Iowa Code § 730.5(15) by Appellants/Cross-Appellees Tyler Dix, Jason Cattell, Jimmy McCann, and Julie Eller—all former employees of Casey's General Stores, Inc.'s Ankeny Distribution Center, a warehouse. (Opinion, pp. 2, 4, 6). The lawsuits arose from Casey's decision to drug test a random pool of its "safety sensitive" warehouse employees on April 6, 2016. (Opinion, p. 5).

Consistent with Iowa Code § 730.5, Casey's introduced a new drug testing policy in January 2016, which allowed drug testing of employees consistent with its written policy and procedural safeguards. (Opinion, p. 2–3). Casey's designated all warehouse employees as holding "safety sensitive" positions. (Opinion, p. 4). McCann and Eller, who worked within a chain-link "cage" in the warehouse on tobacco returns, understood they could be drug tested as designated "safety-sensitive" employees. (Opinion, p. 4–5).[1]

The Appellants/Cross–Appellees were terminated from employment following the April 6, 2016 drug test for either a confirmed positive (for Dix, Cattell, and McCann), or a refusal to submit (for Eller). (Opinion, pp. 2, 6). Following termination, McCann explored employment with a company called Plumb Supply, but decided by July 2016 that he would start a food truck business instead, a field in which he had no prior experience. (Opinion, p. 25; Tr. V. 2 53:3–8). Eller did not explore other employment after being terminated, and the parties stipulated she planned "to apply for disability

[1] McCann and Eller crossed the warehouse to enter the "cage," where panels could open to allow pallets to be driven in on hand or power jacks. (Tr. V. 1 193:3–194:8, 21–25). They also walked past a running conveyor belt, operational forklifts, and tall stacks of pallets on steel shelving which reached the warehouse ceiling to enter and leave the "cage." (Tr. V. 1 195:21–196:23).

benefits based on pulmonary hypertension, and a shoulder and neck injury." (Opinion, p. 26; App. At 119, ¶ 108).

Following a bench trial, the case was appealed to the Court of Appeals, which issued a decision on January 9, 2020. (*See* Opinion). In its decision, the Court of Appeals held that Casey's improperly designated Eller and McCann as "safety–sensitive" employees subject to random pool drug testing under Iowa Code § 730.5(8)(a)(3); that the employer statutory immunity provision at Iowa Code § 730.5(11) could not apply to Casey's own actions taken in good faith; and the "equitable relief" of back pay and/or front pay were available to McCann and Eller. (Opinion, pp. 25–27). Casey's seeks further review of three important matters of statutory interpretation from the Court of Appeal's opinion.

II. ARGUMENT

A. The Court of Appeals Erroneously Disregarded Casey's Designation of "Safety Sensitive" Employment Positions for Purposes of Random Pool Drug Testing under Iowa Code § 730.5(8)(a)(3).

The Court of Appeals erred both in statutory interpretation and the application of well-established legal principles pertaining to employers' business judgment in invalidating McCann and Eller's drug tests because the

court determined they were not "safety–sensitive" employees based on their job duties. (Opinion, pp. 14–28). The language of Iowa Code §§ 730.5(8)(a)(3) and (9)(f) places responsibility on *the employer* to designate its employees as "safety–sensitive" for random pool drug testing, which is appropriate based on the employer's superior knowledge of job duties and work environment, and its potential liability for workplace accidents and property damage. *See, e.g.,* Iowa Code § 85.3(1). Because the Court of Appeals' holding fails in two significant respects on this important matter of statutory interpretation, further review is necessary.

First, the Court of Appeals held that an employee's *job duties* are determinative of whether an employee is "safety-sensitive," which does not appear in the applicable statutory definition. *See* Iowa Code § 730.5(1)(j); (Opinion, p. 16). Instead, Iowa Code § 730.5(1)(j) defines a "safety–sensitive position" to include a "job *wherein an accident could cause loss of human life, serious bodily injury, or significant property or environmental damage*, including a job with duties that include immediate supervision of a person in a job that meets the requirement of this paragraph." (Emphasis added).

This unambiguous language states that the potential for an accident causing loss of life, serious bodily injury, or property damage determines

"safety-sensitivity," not the position's job duties. *See id*. By reading a "job duties" requirement into Iowa Code § 730.5(1)(j), the Court of Appeals not only improperly failed to apply the statutory language, it removed employment positions with the potential for serious accidents for reasons other than job duties from the statute. *See Cubit v. Mahaska Cty*., 677 N.W.2d 777, 782 (Iowa 2004) (holding that the Court of Appeals has "no power to read a limitation into the statute that is not supported by the words chosen by the general assembly.").

Critically, in reading new language into the statute, the Court of Appeals discredited work environment as a factor in determining "safety–sensitivity." (Opinion, p. 17). For instance, under the Court of Appeals' holding, a custodial employee working in a nuclear power plant around reactive material must be treated the same as a custodial employee in a quiet office park, despite the potential for serious bodily injury and property damage in the former's work environment.[2] Limiting the definition of "safety–sensitive position" to an employee's job duties is not reflected in the language of the statute, and is an erroneous interpretation of the same.

[2] In this case, the Court of Appeals in fact agreed Casey's warehouse was a dangerous environment, and thus erroneously disregarded evidence of the risks of accidents involving McCann and Eller's work. (Opinion, p. 17).

Second, the statute at issue shows the legislature intended *the employer* to control the designation of an employee as being in a safety-sensitive position for random pool drug testing. *See* Iowa Code § 730.5(9)(f). The employer's designation is an express prerequisite under Iowa Code § 730.5(8)(a)(3): "An employee of an employer who is *designated by the employer* as being in a safety-sensitive position shall be placed in only one pool of safety-sensitive employees subject to drug or alcohol testing[.]" *See* Iowa Code § 730.5(8)(a)(3). (Emphasis added.). If a position was or was not, objectively speaking, safety–sensitive, then § 730.5(9)(f) would not have needed to include the words "designated by the employer as being." Rather, it could have simply said: "An employee of an employer who is in a safety–sensitive position . . .". The legislature did not write the statute that way, and these six words must be construed to serve a purpose. *See, e.g., Rojas v. Pine Ridge Farms, L.L.C.*, 779 N.W.2d 223, 231 (Iowa 2010) ("We also presume the legislature included all parts of the statute for a purpose, so we will avoid reading the statute in a way that would make any portion of it redundant or irrelevant.").

Moreover, the Court of Appeals rejected the amicus curiae brief of the Iowa Association of Business and Industry, which astutely pointed out that

Iowa courts are, in similar contexts, not to question such "business judgments" of employers. *See, e.g., Farmland Foods Inc. v. Dubuque Human Rights Comm'n*, 672 N.W.2d 733, 743 (Iowa 2003) (noting the employer's right to exercise "business judgment and expertise"); *Woodbury County v. Iowa Civil Rights Comm'n*, 335 N.W.2d 161, 167 (Iowa 1983) ("An employer is entitled to make his own policy and business judgments[.]" (quotations omitted)). In this case, reliance on the employer's judgment is particularly appropriate because it is the employer who would, in most cases, be liable for workplace accidents and property damage. *See, e.g.*, Iowa Code § 85.3(1) ("Every employer, not specifically excepted by the provisions of this chapter, shall provide, secure, and pay compensation . . . for any and all personal injuries sustained by an employee arising out of and in the course of the employment."). The Court of Appeals rejected this precedent in circular fashion, stating the employer's judgment was inconsequential because McCann and Eller clearly did not meet the definition of "safety–sensitive"; however, this finding was based on the Court of Appeals *new* definition of "safety–sensitive" which relied solely on an employee's job duties. (Opinion, p. 15, n.1).

This creates a precarious situation for Iowa employers, because under the Court of Appeals' decision, an Iowa court can invalidate an employer's judgment on what positions are "safety–sensitive" on a limited factual record years after the termination of an employee who was both (1) on notice of their inclusion in a random drug testing pool[3]; and (2) had *a confirmed positive drug result*.

In sum, because the Court of Appeals' interpretation of "safety–sensitive" fails to account for the unambiguous language of Iowa Code §§ 730.5(9)(f) and 730.5(8)(a)(3) and rejects well–established precedent supporting employers' judgment, the Supreme Court's intervention is necessary on further review.

[3] In interpreting Iowa Code §§ 730.5(9)(f) and 730.5(8)(a)(3), the Court of Appeals failed to recognize the importance of the employer's pre-testing designation of "safety-sensitive" positions for random pool drug testing. It is not as though McCann or Eller were caught off guard and improperly placed in a "safety–sensitive" pool of employees on April 6, 2016. The factual record in this case is clear that Casey's determined *prior* to the April 6, 2016 drug screen that all warehouse workers would be designated as "safety–sensitive." (Opinion, p. 4). McCann and Eller knew they were designated as "safety–sensitive" and could be drug tested under Casey's new policy. (Opinion, p. 4–5).

B. The Court of Appeals Erroneously Held the Employer Immunity Provision of Iowa Code § 730.5(11)(a) is Limited to Claims Arising from Third-Party Conduct, in Contradiction to the Plain Language of the Statutory Immunity Provision Which Provides No Such Limitation.

The Court of Appeals again erred both in statutory interpretation and the application of well–established legal principles by narrowly construing the employer immunity provision of Iowa Code § 730.5(11)(a), and reading language into the provision that immunity is only available for claims arising from third-party conduct.

Iowa Code § 730.5(11)(a) grants employers statutory immunity under the following provision:

> **11. Employer immunity**. A cause of action shall not arise against an employer who has established a policy and initiated a testing program in accordance with the testing and policy safeguard provided for under this section, for any of the following:
>
> a. Testing or taking action based on the results of a positive drug or alcohol test result, indicating the presence of drugs or alcohol, in good faith, or on the refusal of an employee or prospective employee to submit to a drug or alcohol test.

The Court of Appeals erroneously found this statutory provision is ambiguous. (Opinion p. 12). The rules of statutory interpretation require the Court to "enforce the plain language of the statute when the statute's language is unambiguous." *Vance v. Iowa Dist. Ct. for Floyd Cty.*, 907 N.W.2d 473,

477 (Iowa 2018). The Court "do[es] not search for meaning beyond the express terms of a statute when the statute is plain and its meaning is clear." *Cubit*, 677 N.W.2d at 781-82 (internal quotations omitted). There is nothing ambiguous about the employer immunity provision at issue—its express terms require three conditions for immunity, which are that the employer: (1) "has established a policy … in accordance with the … policy safeguards provided for under this section," (2) "has … initiated a testing program in accordance with the testing … safeguards provided for under this section," and (3) tested or took action based on a positive test result "in good faith." Iowa Code § 730.5(11)(a).

Instead, the Court of Appeals improperly read a limitation into this immunity provision and "construe[d] section 730.5(11)(a) as inoculating employers *only* from suit arising from third-party conduct." (Opinion p. 13) (emphasis added). While the employer immunity provision certainly does provide immunity for third-party conduct under the prescribed conditions, there is nothing in the language of the statute limiting employer immunity "only" under such circumstances. *See* Iowa Code § 730.5(11)(a). Had the legislature intended to limited employer immunity only to claims arising from third-party conduct, it could have done so by adding additional language to

§ 730.5(11)(a). As noted above, the Court of Appeals had "no power to read a limitation into the statute that is not supported by the words chosen by the general assembly." *Cubit*, 677 N.W.2d at 782 (refusing to limit the statutory immunity provision of section 670.4(11) to claims brought by third parties).

Moreover, this Court's general rule is "to construe statutory immunity provisions broadly." *Nelson v. Lindaman*, 867 N.W.2d 1, 9 (Iowa 2015). The Court of Appeals erroneously delved beyond the plain language of the statute and rebuked this Court's general rule of broad statutory immunity by citing this Court's opinion in *Sims*, which "recognized section 730.5 offers 'protections for employees who are required to submit to drug testing.'" (Opinion p. 13 (quoting *Sims v. NCI Holding Corp.*, 759 N.W.2d 333, 338 (Iowa 2009))). The Court of Appeals ignores that Iowa Code § 730.5—the private sector *drug–free workplaces* statute—is "intended to protect an employer's right to ensure a drug-free workplace." *Sims*, 759 N.W.2d at 338. In other words, the goal and purpose of the statute is to allow an employer to eradicate drug use and its ill effects in its workforce while ensuring accurate test results, not to protect employees from consequences for their confirmed positive drug use. *See id*.

Where the overarching goal of the statute is drug–free workplaces, broad statutory immunity is appropriate and necessary. When an employer meets the immunity conditions by establishing a policy in accordance with the policy safeguards, initiating a testing program in accordance with the testing safeguards, and acting in good faith, it is entirely consistent with the legislative intent of "protect[ing] an employer's right to ensure a drug–free workplace" to grant the employer immunity for "taking action based on the results of a positive drug or alcohol test result, indicating the presence of drugs or alcohol, in good faith, or on the refusal of an employee or prospective employee to submit to a drug or alcohol test." *Sims*, 759 N.W.2d at 338; Iowa Code § 730.5(11)(a). The alternative, as the Court of Appeal opinion compels, prevents employers from taking action based on the results of a confirmed positive drug test or on the refusal of an employee to submit to a drug test based on a technical violation of the "byzantine" statute, despite the conditions of employer immunity prescribed. Broad statutory immunity is also what the plain meaning of the employer immunity provision compels.

The conditions for employer immunity are plainly laid out in the statute, and Casey's satisfied all three immunity conditions: Casey's established a policy in accordance with the policy safeguards; Casey's initiated a testing

program in accordance with the testing safeguards; and Casey's acted in good faith. McCann did not challenge the accuracy of his confirmed positive test for illegal drugs, and Eller did not claim she had a medical excuse for her failure to provide a sufficient sample for testing or that her decision to leave the premises was anything but knowing and voluntary. (Opinion, pp. 2, 6). Employer immunity for taking action under these conditions is consistent with the legislative intent of ensuring drug-free workplaces. Iowa Code § 730.5; *Sims*, 759 N.W.2d at 338. Yet, because the Court of Appeals inappropriately read a limitation into the employer immunity provision which is unsupported by the express terms of the statute, the Court of Appeals found Casey's liable to McCann and Eller for substantial monetary damages and attorneys' fees. This result runs afoul to the legislative intent for drug-free workplaces, and further review is appropriate.

C. The Court of Appeals Misapplied Iowa Code § 730.5(15)(a)(1) in Erroneously Upholding Equitable Remedies for McCann and Eller.

Even if the Court of Appeals did not err in supplanting its judgment for Casey's on "safety-sensitive" positions and in limiting the employer immunity provision of Iowa Code § 730.5(11)(a) in contravention of the plain language

of the statute, the judgment in favor of McCann and Eller was still erroneous because the relief awarded was inequitable.

Iowa Code § 730.5(15)(a)(1) provides for "affirmative relief including reinstatement or hiring, with or without back pay, or any other equitable relief as the court deems appropriate." Thus, under the statute, back pay is an equitable remedy. *See id*. With regard to front pay, the Court of Appeals opinion is the first appellate decision allowing for an award of front pay under Iowa Code § 730.5; this Court has never addressed the scope of damages allowed under Iowa Code § 730.5(15)(a)(1).[4]

In this case, the Court of Appeals upheld awards of twenty–two (22) months of backpay ($94,889.05) for McCann and twenty-two (22) months of backpay ($85,630.75) and two years of front pay ($96,871.72) for Eller.

[4] The Court's intervention on the scope of equitable remedies under Iowa Code section 730.5 is particularly necessary because the Court of Appeals previously affirmed district court decisions holding Iowa Code § 730.5 did not provide for an award of front pay. *See Skipton v. S & J Tube, Inc*., No. 11–1902, 2012 WL 3860446, at *3, *8 (Iowa Ct. App., Sept. 6, 2012) (affirming district court decision which found the plaintiff's termination "was not against public policy, and therefore she was not entitled to front pay."); *Welcher v. American Ordnance, LLC*, No. 04-1045, 2006 WL 126631, at *2, n.2 (Iowa Ct. App., Jan. 19, 2006) (noting the district court's holding that the plaintiff's "damages consisted primarily of front pay and section 730.5 does not provide for an award of front pay" and declining to address the issue because dismissal was affirmed on other grounds).

(Opinion, pp. 23–28). In so doing, the Court of Appeals ignored the statutory language which makes lost wages an equitable remedy, instead interpreting the statute as *entitling* McCann and Eller to lost wages unless Casey's proved they failed to mitigate their damages. (Opinion at p. 24 (citing the standard for a mitigation defense in the employment discrimination context)). This is not a proper interpretation of the basis, and burden of proof, for equitable remedies. As this Court has explained:

> The equity maxim of clean hands expresses the principle that where a party comes into equity for relief he or she must show that his or her conduct has been fair, equitable, and honest as to the particular controversy in issue. A complainant will not be permitted to take advantage of his or her own wrong or claim the benefit of his or her own fraud or that of his or her privies.
>
> The maxim means[] that whenever a party who seeks to set the judicial machinery in motion and obtain some equitable remedy has violated conscience or good faith, or another equitable principle in prior conduct with reference to the subject in issue, the doors of equity will be shut, notwithstanding the defendant's conduct has been such that in the absence of circumstances supporting the application of the maxim, equity might have awarded relief.
>
> What underlies the maxim is the principle that "equity will not aid an applicant in *securing* or *protecting* gains from wrongdoing or in escaping its consequences." The maxim "is ordinarily invoked to protect the integrity of the court where granting affirmative equitable relief would run contrary to public policy or lend the court's aid to fraudulent, illegal or unconscionable conduct."

> The clean hands maxim need not be pleaded; the district court may apply the maxim on its own motion.

Opperman v. M. & I. Dehy, Inc., 644 N.W.2d 1, 6 (Iowa 2002) (quotations omitted) (emphasis in original).

The awards to McCann and Eller violate these equitable principles. McCann lost his job at Casey's because he used illegal drugs. (*See* Supp. App. p. 42). The Court of Appeals acknowledged McCann turned down a job at a plumbing supply warehouse, the only job he explored after being terminated from Casey's, and even told the manager he "enjoyed a 'left handed cigarette' at the end of the day so the prescreening test would be an issue" if accepted employment. (Opinion, p. 25).

The Court of Appeals relied on McCann's testimony that the plumbing supply job was in Des Moines, and he lives in Pleasantville and did not want to miss his daughter's school activities in Pella due to the distance. (Opinion, p. 25). Yet, McCann's job at Casey's was in Ankeny—even farther from Pleasantville than Des Moines. (*See* Opinion, p. 4). McCann's actions were objectively unreasonable, and thus the award of $94,889.05 in backpay is inequitable under Iowa Code § 730.5(15)(a)(1).

Eller lost her job at Casey's because she walked off the premises without providing a sample for testing on April 6, 2016. (Opinion, p. 6). Eller

did not look for work *at all* between her termination in April 2016 and trial in February 2018. (Opinion, pp. 26–27; Tr. V. 2 93:22–94:2). The Court of Appeals upheld $182,502.47 in front and back pay to Eller on the basis that "other jobs are unavailable" due to her "considerable physical restrictions," despite the fact she testified she could have continued in her job at Casey's. (Opinion, p. 27). Yet, Eller did not seek reinstatement at Casey's, and testified "yes and no," as to whether she could work. (Tr. V. 1 210:24–211:1; Supp. App. p. 42). Further, Eller planned on filing for social security disability benefits due to pulmonary hypertension and a shoulder and neck injury, making an award of two years of front pay entirely inequitable. (App. p. 119 at ¶ 108); *see* 20 C.F.R § 416.905 (defining "disability" for purposes of social security benefits as "the inability to do **any** substantial gainful activity by reason of any medical determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months. To meet this definition, you must have a severe impairment(s) that makes you **unable to do your past relevant work** [] or any other substantial gainful work that exists in the national economy." (emphasis added)).

As such, the Court of Appeals improperly placed the burden of proof on Casey's pertaining to McCann and Eller's equitable remedies under Iowa Code § 730.5(15)(a)(1), and neither provided substantial evidence to support the front and back pay awarded. The damages awarded to McCann and Eller thereby violate Iowa Code § 730.5(15)(a)(1) and should be reversed.

CONCLUSION

Casey's respectfully requests the Iowa Supreme Court accept this matter upon further review, and in order to reverse three erroneously decided interpretations of a difficult and important law, the Iowa drug–free workplaces statute at Iowa Code § 730.5.

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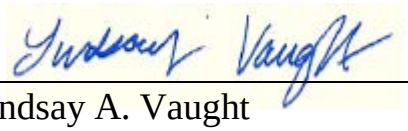
CERTIFICATE OF FILING

The undersigned hereby certifies that the Application for Further Review of the Appellant was electronically filed via the Iowa Supreme Court's Electronic Data Management System (EDMS) on the 29th day of January, 2020.



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CERTIFICATE OF SERVICE

It is hereby certified that on the 29th day of January, 2020, the undersigned party, or person acting on its behalf, did file via EDMS the foregoing document, which gives notice thereof to the following:

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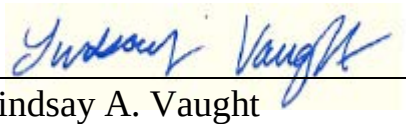

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CERTIFICATE OF COMPLIANCE WITH TYPEFACE REQUIREMENTS AND TYPE-VOUME LIMITATION FOR AN APPLICATION FOR FURTHER REVIEW

This Application complies with the typeface and type-volume requirements of Iowa R. App. P. 6.1103(4) because:

> This Application has been prepared in a proportionally spaced typeface using Microsoft Word Times New Roman in size 14 font, and contains 4,332 words, excluding the parts of the Application exempted by Iowa R. App. P. 6.1103(4)(a).

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