

IN THE SUPREME COURT OF IOWA

JOHN LEE HRBEK,

S. Ct. No.19-1571

Applicant-Appellant,

vs.

STATE OF IOWA,

Respondent- Appellee.

INTERLOCUTORY APPEAL FROM THE IOWA DISTRICT
COURT IN AND FOR POTTAWATTAMIE COUNTY
THE HONORABLE KATHLEEN A. KILNOSKI, JUDGE

APPELLANT'S SUPPLEMENTAL PRO SE FINAL BRIEF
PURSUANT TO IOWA RULE APPELLATE
PROCEDURE 6.901(2)

John Lee Hrbek
Anamosa State Penitentiary
406 North High Street
Anamosa, IA 52205-1157

Appellant – Pro Se

Philip B. Mears, Mears Law Office
209 E. Washington Street
Paul-Helen Building, Suite 203
Iowa City, Iowa 52240-3951
(319) 351-4363 Office (319)
351-7911 Fax
philmears@mearslawoffice.com

ATTORNEY FOR APPELLANT.

CERTIFICATE OF SERVICE

On August 24, 2020, the undersigned certifies that a true copy of the foregoing instrument was served upon the Defendant-Appellant by placing one copy thereof in the United States mail, proper postage attached, addressed to:

John Hrbek #0104465
Anamosa State Penitentiary
406 North High Street
Anamosa, IA 52205

/s/ Philip B. Mears
MEARS LAW OFFICE
209 E. Washington Street, Suite 203
Iowa City, IA 52240

TABLE OF CONTENTS

	<u>Page:</u>
Certificate of Service	2
Table of Authorities	4
Statement of Issues Presented for Review	9
Statement of the Case	14
Arguments	
I. THE IOWA SUPREME COURT HAS INHERENT AUTHORITY TO EXERCISE REASONABLY NECESSARY, AND DISCRETIONARY POWER TO GRANT FUNDAMENTAL SUPPLEMENTAL PRO SE PARTICIPATION TO ACHIEVE THE FAIR AND ESSENTIAL ADMINISTRATION OF JUSTICE IN OUR STATE COURTS.....	16
II. THE CHANGE(S) TO IOWA CODE SECTIONS 814.6A AND 822.3B ARE NOT PROCEDURAL NOR REMEDIAL AND IF NOT UNCONSTITUTIONAL CAN ONLY BE APPLIED PROSPECTIVELY.....	20
III. THE CHANGES TO IOWA CODE SECTIONS 814.6A AND 822.3B IF CONSTITUTIONAL CAN NOT BE APPLIED RETROACTIVELY.....	26
Conclusion	28
Attorney’s Cost Certificate	31
Certificate of Compliance.....	32

TABLE OF AUTHORITIES

<u>Cases:</u>	<u>Pages:</u>
Acklson v. Manly Toys Direct, LLC., 832 N.W.2d 678 (Iowa2013)	21
Anderson Fin. Services v. Miller, 769 N.W.2d. 575 (Iowa 2009)	26
Baumler v. Hemesath, 534 N.W.2d. 650 (Iowa 1995)	21
Book v. Voma Tire Corp., 860 N.W.2d. 576 (Iowa 2015)	21
Brewer v. Iowa District Court for Pottawattamie County, 395 N.W.2d. 841(Iowa 1986)	27
Bryson v. State, 886 N.W.2d. 860 (Iowa 2016)	24
California v. Trombetta, 467 US 479, 104 S. Ct. 2528 (1984)	19
Caplin v. Drysdale v. United States, 491 US 617, 109 S. Ct. 2646 (1988)	23
City of Waterloo v. Bainbridge, 749 N.W.2d. 245 (Iowa 2008)	26
Didinger v. Allsteel, Inc., 860 N.W.2d. 557 (Iowa 2015)	26, 28
Dockery v. State, Inc., 881 N.W.2d. 469 (Ct. App. 2016)	21
Douglas v. People of California, 372 US 353, 83 S. Ct. 814, 9 L.Ed.2d. 811 (1963)	24
Evitts v. Lucey, 468 US 387, 105 S. Ct. 830, 83 L.Ed.2d. 821 (1985)	24
Frink v. Clark, 285 N.W.2d. 681 (Iowa 1939)	28

Furgison v. State, 217 N.W.2d. 613 (Iowa 1974)	17
Gamble v. State, 723 N.W.2d. 443 (Iowa 2006)	Passim
Gen. Mortg. Corp. of Iowa v. Campbell, 138 N.W.2d. 416 (Iowa 1965)	22
Good v. State, 920 N.W.2d. 520 (Iowa 2018)	26
Gray v. Comm’r of Revue, 422 Mass. 666, 665 N.E.2d. 17 (Mass. 1966)	19
Green v. State, 2005 App. Lexis 565 (Ct. App. 2005)	18
Griffin v. Illinois, 351 US 12, 76 S. Ct. 585, 100 L.Ed 891, 55 ALR2d. 1055 (1956).....	24
Hamdan v. Rumsfeld, 548 US 557, 126 S. Ct. 2749, 165 L. Ed. 2d. 723 (2006) ...	21
Hoover v. Iowa State Highway Comm’n, 222 N.W. 438 (Iowa 1928).....	30
Hrbek v. State, 872 N.W. 2d. 198, 2015 App. Lexis 908 2015 WL 6087572 (Ct. App. 2015).....	14
Hylar v. Garner, 548 N.W.2d. 864 (Iowa 1996)	25
Iowa Civil Liberties Union v. Critelli, 244 N.W.2d. 564(Iowa 1977)	19
In re Estate of De Tar, 572 N.W.2d. 178 (Ct. App. 1997)	25
In re K.N., 625 N.W.2d. 731 (Iowa 2001)	19
In re Marriage of IHLE, 577 N.W.2d. 64 (Ct. App. 1998).....	19
In re Marriage of Thatcher, 864 N.W.2d. 533 (Iowa 2015)	19
James v. State, 479 N.W.2d. 287 (Iowa 1991)	20
Johnson v. Miller, 270 N.W.2d. 624 (Iowa 1978)	19
Jones v. State, 731 N.W.2d. 388, 2007 Iowa Sup. Lexis 61 (Iowa 2007)	20, 21

Kubik v. Burk, 540 N.W. 2d. 60 (Ct. App. 1995)	25
Leonard v. State, 461 N.W.2d. 465 (Iowa 1990).....	Passim
May’s Drug Stores v. State Tax Commission, 45 N.W.2d. 245 (Iowa 1950)	30
McCoy v. Louisiana, 138 S. Ct. 1500, 200 L. Ed. 2d. 821, 830 (2018).....	22
McClanahan v. State, 2002 Iowa App. Lexis 1152	18
McElroy v. State, 703 N.W.2d. 385 (Iowa 2005).....	21
McSurely v. McGrew, 118 N.W. 415 (Iowa 1908).....	28
Metropolitan Jacobsen Dev. Venture v. Board of Review, 476 N.W.2d. 726 (Ct. App. 1991).....	24
Ostergen v. Iowa District Court for Muscatine County 863 N.W.2d. 294 (Iowa 2015)	20
Perez-Fuentes v. State, 886 N.W.2d. 105, 2016 Iowa App. Lexis 802 (Ct. App. 2016)	18
Planned Parenthood of the Heartland v. Reynolds ex rel. State, 915 N.W.2d. 206 (Iowa 2018)	29
Sanders v. State, 843 N.W.2d. 476 (Ct. App. 2014).....	21
State v. Codey, 468 N.W.2d. 88 (Ct. App. 1991)	17
State v. Derby, 800 N.W.2d. 52 (Iowa 2011)	21
State v. Hoegh, 632 N.W.2d. 885 (Iowa 2001)	19
State v. Iowa District Court for Johnson County, 750 N.W.2d. 531 (Iowa 2008) ..	19
State v. Johnson, 756 N.W.2d. 682 (Iowa 2008)	17
State v. Osborne, 154 N.W. 294 (Iowa 1915)	30

State v. Seering, 701 N.W.2d. 655 (Iowa 2005)	30
State v. Tyler, 867 N.W.2d. 136 (Iowa 2015)	25
United States v. Cronin, 466 US 648, 104 S. Ct. 2039 (1984)	23
Varnum v. Brien, 763 N.W.2d. 862 (Iowa 2009)	29
Young v. Gregg, 480 N.W.2d. 75 (Iowa 1992)	25
Zamora v. State, 2019 Iowa App. Lexis 83 (2019).....	25

Constitutional Provisions:

Pages:

Iowa Const. art. 1 (Bill of Rights)	29
Iowa Const. art. 1, §2	30
Iowa Const. art. 1, §6	29
Iowa Const. art. 1, §9	30
Iowa Const. art. X (Amendments to the Constitution).....	30
Iowa Const. art. XII, §1.....	29, 30
United States Constitution, Amendment V.....	30
United States Constitution, Amendment XIV	30

Statutes:

Iowa Code, §4.5 (2019)	28
Iowa Code, §4.13 (2019)	27
Iowa Code, §663A.5 (1990)	Passim
Iowa Code, §663A.6 (1990)	Passim

Iowa Code, §663A.6A (1990)	Passim
Iowa Code, §663A.6B (1990)	Passim
Iowa Code, Chapter 822 (2017)	24
Iowa Code, §822.5 (2019)	Passim
Iowa Code, §822.6 (2019)	Passim
Iowa Code, §822.9 (2019)	24, 26, 28

Court Rules:

Iowa Rules of Appellate Procedure, 6.13(2) (2008).....	17
Iowa Rules of Appellate Procedure, 6.901(2) (2019).....	17
Iowa Rules of Appellate Procedure, 6.903(2)(g)(3) (2019)	26

Other Authorities:

S.F. 589, 88 th G.A. (2019)	Passim
--	--------

STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

- I. THE IOWA SUPREME COURT HAS INHERENT AUTHORITY TO EXERCISE REASONABLY NECESSARY, AND DISCRETIONARY POWER TO GRANT FUNDAMENTAL SUPPLEMENTAL PRO SE PARTICIPATION TO ACHIEVE THE FAIR AND ESSENTIAL ADMINISTRATION OF JUSTICE IN OUR STATE COURTS.**

Authorities

Leonard v. State, 461 NW2d 465 (Iowa 1990)

Gamble v. State, 723 NW2d 443 (2006)

Iowa Rule Appellate Procedure 6.13(2) (2008)

Iowa Rule Appellate Procedure 6.901(2) (2019)

State v. Codey, 468 NW2d 88 (Ct. App. 1991)

State v. Johnson, 756 NW2d 682 (Iowa2008)

Furgison v. State, 217 NW2d 613 (Iowa1974)

Perez-Fuentes v. State, 886 NW2d 105 (Ct. App. 2016), 2016 Iowa App. Lexis 802.

McClanahan v. State, 2002 Iowa App. Lexis 1152 (Ct. App. 2002)

Green v. State, 2005 Iowa App. Lexis 565 (Ct. App. 2005)

In re Marriage of Thatcher, 864 NW2d 533 (Iowa 2015)

State v. Hoegh, 632 NW2d 885 (Iowa 2001)

Gray v. Comm'r of Revenue, 422 Mass. 666, 665 NE2d 17 (Mass. 1966)

State v. Iowa District Court for Johnson County, 750 NW2d 531 (Iowa 2008).

In re K.N., 625 NW2d 731 (Iowa 2001)

Johnson v. Miller, 270 NW2d 624 (Iowa 1978)

Iowa Civil Liberties Union v. Critelli, 244 NW2d 564 (Iowa 1976)

In re Marriage of IHLE, 577 NW2d 64 (Ct. App. 1998)

Ostergen v. Iowa District Court for Muscatine County, 863 NW2d 294 (Iowa 2015).

II. THE CHANGE(S) TO IOWA CODE SECTIONS 814.6A AND 822.3B ARE NOT PROCEDURAL NOR REMEDIAL AND IF NOT UNCONSTITUTIONAL CAN ONLY BE APPLIED PROSPECTIVELY.

Authorities

James v. State, 479 NW2d 287 (Iowa 1991)

Jones v. State, 731 NW2d 388 (Iowa 2007), 2007 Iowa Sup. Lexis 61

Sanders v. State, 843 NW2d 476 (Ct.App. 2014)

Dockery v. State, 881 NW2d 469 (Ct. App. 2016)

Hamdan v. Rumsfeld, 548 us 557, 126 S. Ct. 2749, 165 L.Ed.2d 723 (2006).

Book v. Voma Tire Corp., 860 NW2d 576 (Iowa 2015)

Acklson v. Manly Toys Direct, LLC., 832 NW2d 678 (Iowa 2013)

State v. Derby, 800 NW2d 52 (Iowa 2011)

McElroy v. State, 703 NW2d 385 (Iowa 2005)

Baumler v. Hemesath, 534 NW2d 650 (Iowa 1995)

Gen. Mortg. Corp. of Iowa v. Campbell, 138 NW2d. 416 (1965)

McCoy v. Louisiana, 138 S. Ct. 1500, 200 L.Ed.2d. 821 (2018)

Caplin & Drysdale v. United States, 491 US617, (1988).109 S. Ct. 2646

California v. Trombetta, 467 US 479, 104 S. Ct. 2528 (1984)

United States v.Cronic, 466 US 648, 104 S. Ct. 2039 (1984)

Evitts v. Lucey, 469 US 387, 105 S. Ct. 830, 83 L.Ed.2d 821 (1985)

Douglas v. People of California, 372 US 353, 83 S. Ct. 814, 9 L.Ed.2d 811 (1963).

Griffin v. Illinois, 351 US 12, 76 S. Ct. 585, 100 L.Ed. 891, 55 ALR.2d 1055 (1956).

Iowa Code, Chapter 822 (2018)

Bryson v. State, 886 NW2d 860(2016)

Metropolitan Jacobsen Dev. Venture v. Board of Review, 476 NW2d 726 (Ct. App. 1991).

Kubik v. Burk, 540 NW2d 60 (Ct. App.1995)

In re Estate of De Tar, 572 NW2d 178 (Ct. App. 1997) Young v. Gregg, 480 NW2d 75 (Iowa 1992)

Zamora v. State, 2019 Iowa App. Lexis 83(2019)

State v. Tyler, 867 NW2d 136 (Iowa 2015)

Hylar v. Garner, 548 NW2d 864 (Iowa 1996)

Iowa Rule Appellate Procedure 6.903(2)(g)(3)(2019)

Goode v. State, 920 NW2d 520 (Iowa 2018)

III. THE CHANGE(S) TO IOWA CODE SECTIONS 814.6A AND 822.3B IF CONSTITUTIONAL CAN NOT BE APPLIED RETROACTIVELY.

Authorities

Iowa Code §822.9 (2019)

Iowa Code §4.13 (2019)

Brewer v. Iowa District Court for Pottawattamie County, 395 NW2d 841 (Iowa 1986).

Frink v. Clark, 285 NW 681 (1939)

McSurely v. McGrew, 118 NW 415(1908)

Iowa Code §4.5 (2019)

Dindinger v. Allsteel, Inc., 860 NW2d 557 (Iowa 2015)

IV. CONCLUSION

Authorities

Iowa Const. art. XII, §1

Varnum v. Brien, 763 NW2d 862 (Iowa 2009)

Planned Parenthood of the Heartland v. Reynolds ex rel. State, 915 NW2d 206 (Iowa 2018).

City of Waterloo v. Bainbridge, 749 NW2d 245 (Iowa 2008)

Anderson Fin. Services v. Miller, 769 NW2d 575 (Iowa 2009)

Iowa Const. art 1 (Bill of Rights)

Iowa Const. art. 1, §6

Iowa Const. art. XII, §1

Iowa Const. art. 1 §2

Iowa Const. art. X (Amendments to the Constitution)

Iowa Const. art. 1, §9

United States Constitution, Amendments V, XIV

State v. Seering, 701 NW2d 655 (Iowa 2005)

State v. Osborne, 154 NW 294(1915)

Hoover v. Iowa State Highway Comm'n., 22 NW 438(1928)

May's Drug Stores v. State Tax Commission, 45 NW2d 245(1950)

City of Waterloo v. Bainbridge, 749 NW2d 245 (Iowa 2008)

Anderson Fin. Services v. Miller, 769 NW2d 575 (Iowa 2009)

Iowa Const. art 1 (Bill of Rights)

Iowa Const. art. 1 , §6 Iowa Const. art. XII, §1 Iowa Const. art. 1 , §2

Iowa Const. art. X (Amendments to the Constitution) Iowa

Const. art. 1, §9

United States Constitution, Amendments V, XIV

State v. Seering, 701 NW2d 655 (Iowa 2005)

State v. Osborne, 154 NW 294(1915)

Hoover v. Iowa State Highway Comm'n., 22 NW 438(1928)

May's Drug Stores v. State Tax Commission, 45 NW2d 245 (1950)

STATEMENT OF THE CASE

Appellant John Hrbek submits this brief pursuant to the Supreme Court's October 16, 2019, Order, granting his application for interlocutory appeal, challenging SF 589 applicability to him. Specifically challenging the unconstitutionality of Iowa Code sections 814.6A and 822.3B, both facially and as applied retroactively to him. Hrbek adopts appellate counsel's statement of the case by this reference.

Relevant Proceeding: On October 14, 2015, the Honorable Chief Judge, David R. Danilson set forth the procedural history from Hrbek's filing of his postconviction relief application on June 30, 1987, thru June 28, 2013, when Hrbek filed a pro se motion to rescind the 1.944 dismissal. See: Hrbek v. State, 872 NW2d 198; 2015 Iowa App. Lexis 908; 2015 WL 6087572 (Iowa App. 2015). After reinstatement, Hrbek took a more active pro se role. That is until July 11, 2019, when Respondent filed "Notice RE: Pro Se Filings By Applicant Currently Represented By Counsel." (**App.7**)(**Notice**). On July 24,2019, Hrbek filed a pro se Resistance to the notice. (**App. 9**) (**Resistance**). On August 25, 2019, the Honorable Kathleen A. Kilnoski, while granting Hrbek's pro se application for a expert witness, included a unrelated order (within the expert witness order), prohibiting Hrbek from making future pro se filings. (**App. 25**) (**August 25, 2019 - Order, Page 2, Paragraphs 3-8**).

SF 589 was passed by both houses of the Legislature on April 25, 2019. It

was signed by the Governor on May 16, 2019, and took effect on July 1, 2019.

See: SF 589, Bill History at:

<https://www.legis.iowa.gov/legislation/billTracking/billHistory?billName=SF>

[%20589&ga=88](#) . The agencies that have a history of violating defendant(s) rights (e.g., the County Attorney, and the Sheriff & Deputies Associations (4-Lobbyists lobbied for the bill's passage. No one else). (**App. 16**)(**Attachment "B" Lobbyist Declarations**) (**App. 9**)(**Resistance, Page 1, Paragraph 3**).

Relevant to Hrbek's case are the newly created provisions prohibiting pro se filings when represented by counsel.

Section 35. New Enactment: 822.3B, Pro se Filings by Applicants

Currently Represented By Counsel:

1. An applicant seeking relief under §822.2 who is currently represented by counsel shall not file any pro se document, including an application, brief, reply brief, or motion, in any Iowa Court. The court shall not consider, and opposing counsel shall not respond to, such prose filings.
2. This section does not prohibit an applicant for postconviction relief from proceeding without the assistance of counsel.
3. A represented applicant for postconviction relief may file a pro se motion seeking disqualification of counsel, which a court may grant upon a showing of good cause.

Iowa Code §822.3B (2019 SF 589, §35, eff. July 1, 2019).

Section 30. New Enactment: 814.6A, Pro se Filings By Defendants

Currently Represented By Counsel:

1. A defendant who is currently represented by counsel shall not file any pro se document, including a brief, reply brief, or motion, in any Iowa Court. The court shall not consider, and opposing counsel shall not respond to, such pro se filings.

2. This section does not prohibit a defendant from proceeding without the assistance of counsel.

3. A defendant currently represented by counsel may file a pro se motion seeking disqualification of the counsel, which the court may grant upon a showing of good cause.

Iowa Code §814.6A, (2019 SF 589, §30, eff. July 1, 2019). Hrbek by this reference adopts appellate counsel's relevant proceedings.

I. THE IOWA SUPREME COURT HAS INHERENT AUTHORITY TO EXERCISE REASONABLY NECESSARY, AND DISCRETIONARY POWER TO GRANT FUNDAMENTAL SUPPLEMENTAL PRO SE PARTICIPATION TO ACHIEVE THE FAIR AND ESSENTIAL ADMINISTRATION OF JUSTICE IN OUR STATE COURTS.

A. Appellee's Resistance - Hybrid Representation:

The State contends "that criminal defendants at trial enjoy a constitutional right to counsel, or to act pro se, but do not have a right to both. The State(s) are free to prohibit hybrid representation." (citations omitted) (Underline Emphasis Added). (**Resistance, Page 3**). While Hrbek may not have a federal right, this Court exercised its constitutional and inherent authority when interpreting Iowa Code, Sections 663A.5 (**now §822.5**) and 663A.6 (**now §822.6**) and provided all defendants (applicants), including Hrbek with hybrid right(s), where Hrbek is granted

adequate and meaningful access to the Court(s) to be heard (**due process**), through supplemental prose participation; Which over the last 29-years has become vested substantive rights. See: **Leonard v. State**, 461 NW2d 465 (Iowa 1990). These rights apply equally to appeal(s). See: **Gamble v. State**, 723 NW2d 443 (Iowa 2006), **FN-1**, cites **Iowa.R.App. P. 6.13(2)**, and states:

"Any criminal defendant or applicant for PCR who wishes to file a prose supplemental brief or designate additional parts of the district court record for inclusion in the appendix may do so within 15-days of service of the proof brief being filed by their counsel... " (**FN-1**)(**now the Rule is: 6.901(2)**)(**2019**).

In **State v. Codey**, 468 NW2d 833 (Ct. App. 1991), the Court held, "that if the district court has discretion to deny hybrid representation outright, it has discretion, in granting a defendant's request for hybrid representation..." **Id.** **837**. See also, **State v. Johnson**, 756 NW2d 682, 687-88 (Iowa 2008).

B. Interpreting Postconviction Relief Statutes:

In **Furgison v. State**, 217 NW2d 613, 615 (Iowa 1974) this Court held, Indeed, the key lies in the discretion lodged in the district court by virtue of **Iowa Code, §663A.5** (now §822.5). We think, discretion to deny counsel, necessarily implies discretion to deny dispensing with counsel. We see nothing in the language of §663A.5, indicating a legislative intent to deny the district court such discretion.

We hold that §663A.5 provides the district court with discretion to deny

applicant's request to dispense with counsel. We think appointment of counsel benefits applicants, aids the trial court, is conducive to a fair hearing, and is certainly helpful in the event of an appeal. In **Leonard v. State**, this Court tempered its Furgison holding with one qualification, that a PCR applicant may file applications, briefs, resistances, motions, and all other documents in addition to what counsel files. **Id.** 461 NW2d 465, 468 (Iowa 1990). In **Gamble v. State**, 723 NW2d 443 (Iowa 2006), while interpreting another PCR statute, Iowa Code, §822.6, this Court held:

"Section 822.6 contemplates that an applicant in a PCR case will be allowed to have extensive pro se participation. This is evidenced by the language in §822.6:

"The court may make appropriate orders for amendments of a application or any pleading or motion, or pleading over, for filing further pleadings or motions, or to extend the time for filing any pleading. In considering the application, the court shall take into account its substance regardless of defect in form. The statute even provides that if applicant fails to furnish an adequate record the opposing party (State) shall file with its answer, the record or portion thereof material to the questions raised in the application."

Gamble, Id.445; also, **Perez-Fuentes v. State**, 886 NW2d 105 (Ct. App. 2016); 2016 App. Lexis 802. Iowa Code, §822.6 was §663A.6. See: **McClanahan v. State**, 2002 Iowa App. Lexis 1152 (S. Ct. #2-726/01-1697, filed October 30, 2002); **Green v. State**, 2005 Iowa App. Lexis 565 (S. Ct. 5-496/04-1764, filed on July 27, 2005).

C. **Inherent Authority Is Necessary To Discharge Traditional Judicial Responsibilities:**

It is fundamental to our system of government that the authority for Courts to act is conferred by the constitution or by a statute. Yet, it is equally fundamental, that in addition to these delegated powers, Courts also possess broad powers to do whatever is reasonably necessary to discharge their traditional responsibilities. This type of judicial authority is known as inherent power, and it is derived from the “Separation of Powers” between the three branches of government. **In re Marriage of Thatcher**, 864 NW2d533, 546-47 (Iowa 2015). Inherent powers are necessary for the Courts to properly function as a separate branch of government. Inherent powers may be so fundamental to the operation of the Court that any attempt by the legislature to restrict or divest the Court of its power that it could violate the separation of powers doctrine. **State v. Hoegh**, 632 NW2d 885, 889. (Iowa 2001), quoting, **Gray v. Comm'r of Revenue**, 422 Mass. 666, 665 NE2d 17, 22 (Mass. 1966).

When a court is acting within its jurisdiction it always has the inherent authority to do what is necessary for the administration of justice. **State v. Iowa District Court for Johnson County**, 750 NW2d 531, 534 (Iowa 2008). District courts have the inherent authority to ensure the orderly, efficient and fair administration of justice. **In re K.N.**, 625 NW2d731, 734 (Iowa 2001). In adopting rules for the management of cases. **Johnson v. Miller**, 270 NW2d 624, 626 (Iowa 1978). Courts have inherent common-law power to promulgate local rules. **Iowa Civil Liberties Union v. Critelli**, 244 NW2d 564, 569-70 (Iowa 1976). See also, **In re Marriage of IHLE**, 577 NW2d 64, 67 (Ct. App.

1998), exercising inherent authority a trial judge can impose reasonable time limits for trials. **Ostergen v. Iowa District Court for Muscatine County**, 863 NW2d 294, 300 (Iowa 2015).

II. THE CHANGE(S) TO IOWA CODE SECTIONS 814.6A AND 822.3B ARE NOT PROCEDURAL NOR REMEDIAL AND IF NOT UNCONSTITUTIONAL CAN ONLY BE APPLIED PROSPECTIVELY.

A. Appellee's Resistance - Remedial & Procedural

The State, while admitting §822.3B has no explicit direction that it applies retroactively (**Resistance, Page 5:15-16**) to Hrbek, goes on to argue that the new enactments should be applied retroactively because they are "procedural law," and "remedial" in nature and do not affect any substantive right(s). (**Resistance, Pages 4-6, Paragraph 4**) (citations omitted).

First And Foremost, the new enactments of §814.6A and 822.3B appear to be jurisdiction stripping statute(s) to divest this Court and the district courts of their inherent authority and/or their delegated powers to administer justice fairly. While I, as a layperson, have not located any State law precedent for such a jurisdiction–stripping canon argument. I respectfully submit, that any effort to apply such jurisdiction- stripping would conflict with **James v. State**, 479 NW2d287, 290 (Iowa 1991) for appeal(s), and it would further conflict with the pro se supplemental participation holdings in **Leonard v. State**, 461 NW2d 465 (Iowa 1990); **Gamble v. State**, 723 NW2d 443 (Iowa 2006); **Jones**

v. State, 731 NW2d 388(Iowa 2007); **Sanders v. State**, 843 NW2d 476 (Ct. App. 2014); **Dockery v. State**, 881 NW2d 469 (Ct. App. 2016) and many others.

Notwithstanding, jurisdiction-stripping provisions do not "apply to cases pending at the time of their enactment." **See: Hamdan v. Rumsfeld**, 548 US 557, 577, 126 S. Ct. 2749, 2765,165 L.Ed.2d 723 (2006).

B. To Allow The New Enactments of 814.6A and 822.3B to Stand, Or To Otherwise Apply Them To Hrbek Would Violate The Stare Decisis Doctrine:

Stare decisis alone dictates continued adherence to this Court's precedent of James, Leonard, Gamble, etc., absent a compelling reason to change the law. **Book v. Voma Tire Corp.**, 860 NW2d 576, 594 (Iowa 2015). In **Acklson v. Manley Toys Direct, L.L.C.**, 832 NW2d 678, 688 (Iowa 2013), this Court held, "we are slow to depart from stare decisis and only do so under the most cogent circumstance." In **State v. Derby**, 800 NW2d 52, 59 (Iowa 2011), this Court stated, "We do not overturn our precedents lightly and will not do so absent a showing that the prior decision was clearly erroneous" (quoting **McElroy v. State**, 703 NW2d 385, 394-95 (Iowa 2005) (Collecting cases on Stare Decisis). This Court presumes the legislature is aware of its cases (e.g., James, Leonard, Gamble, etc.) that interpret statutes. **Baumler v.**

Hemesath, 534 NW2d 650, 655 (Iowa 1995).

Furthermore, when many years pass following such a case (29-years, Leonard), without a legislative response this Court assumes the legislature has acquiesced to the interpretation. **See: Gen. Mortg. Corp. of Iowa v. Campbell**, 58 Iowa 143, 152, 138 NW2d 416, 421 (1965).

C. Forcing A Choice of All or Nothing Violates the Sixth Amendment to Assistance of Counsel, and Article 1, Section 10 of the Bill of Rights, to Assistance of Counsel:

These new enactments of Iowa Code Sections 814.6A and 822.3B are unconstitutional on their face and as applied because they violate the constitutional right(s) to assistance of counsel, by forcing to choose one or the other (**e.g., prose or counsel, but not both**). The United States Supreme Court recently held in **McCoy v. Louisiana**, 138 S. Ct. 1500, 1508, 200 L.Ed.2d821, 830 (2018), that:

"The choice is not all or nothing. To gain assistance, a defendant need not surrender control. For the Sixth Amendment, in granting to the accused personally the right to make his defense, speaks of the "assistance" of counsel, and a assistant, however expert, is still an assistant. The Sixth Amendment contemplates a norm in which the accused, not the lawyer, is master of his own defense. Trial management is the lawyer's province: Counsel provides his or her assistance by making decisions such as what arguments to pursue, what evidentiary objections to raise, and what agreements to conclude regarding the admission of evidence..." (**Ginsburg, J., joined by Roberts, Ch. J. and Kennedy, Breyer, Sotomayor, and Kagan, JJ.**)

McCoy, Id. 138 S. Ct. 1508, 200 L.Ed.2d 830(2018).

The language in McCoy is the rationale cited by this Court in Leonard v. State, 461 NW2d 465, 468 (Iowa 1990) for pro se supplemental participation.

These constitutional requirement(s) for fairness not only prevent the State (i.e., Prosecutors & Law Enforcement, the right violators, who lobbied for these enactments) from interfering actively with the defense, but also from passively hampering a defendant's efforts. Caplin & Drysdale v. United States, 491 US 617, 635, 109 S. Ct. 2646, 2667 (1988); California v. Trombetta, 467 US 479, 485, 104 S. Ct. 2528, 2532 (1984). While criminal trials are not a game where the participants are expected to enter the ring with a near match in skills, neither is it a sacrifice of unarmed prisoners to gladiators. United States v. Cronin, 466 US 648, 104 S. Ct. 2039, 2046(1984).

D. Iowa Code Sections 814.6A and 822.3B are Unconstitutional Because they Deny Hrbek His Right(s) to be Heard on his Pro-Se Issues:

The State argued, "represented parties may still have all the issues they wish submitted, they must only ask their counsel to provide it..." (**Resistance, Pg. 6:7-10**). This assumption is a grandiose delusion, its disingenuous and hollow. For example, Iowa Code, §814.6A does not provide counsel with the additional 15-days, nor the additional 7,000 words to raise the additional pro se issues afforded pro se briefs. Notwithstanding, counsel is only being paid \$64-\$73 per hour, instead of their normal rate of \$275 an hour if not more, compelling counsel to take on more \$65 boiler-plate case(s) just to

be able to stay in business.

Moreover the State provides for Collateral Review and a Appeal as a "Right," but now refuses pursuant to §§814.6A and 822.3B to provide Hrbek with a fair and meaningful opportunity to be heard, and to obtain adjudication(s) on his prose issues. Sections 814.6A & 822.3B do not comport with those due process rights. **Evitts v. Lucey**, 469 US 387, 405, 105 S. Ct. 830, 841, 83 L.Ed.2d 821 (1985) citing **Douglas v. People of California**, 372 US 353, 83 S. Ct. 814, 9L.Ed.2d 811 (1963); **Griffin v. Illinois**, 351 US 12, 76 S. Ct. 585, 100 L. Ed 891, 55 ALR2d 1055 (1956). **Iowa Code 822**, §§822.2 & 822.3, provide Hrbek with a Right to Collateral Review and §822.9 (2019) provides him the right to appeal. **Bryson v. State**, 886 NW2d 860, 861 (FN-1)(2016). Hrbek will be denied these rights simply because he will not waive his right to assistance of counsel, therefore these substantive rights will be forever lost. How many different procedural, statutory and substantive rights would Hrbek be denied if he did waive counsel and proceeded strictly pro se?

E. Procedural & Remedial Judicial Restraints Are Already In Place So There Is No Need For §814.6A Nor§822.3B:

In **Metropolitan Jacobson Dev. Venture v. Board of Review**, 476 NW2d 726, 729 (Ct. App. 1991), it was held that "We have said that we do not utilize a deferential standard when persons choose to represent themselves.

'The law does not judge by two standards, one for lawyers and one for lay persons. Rather, all are expected to act with equal competence. If alay person chooses to proceed pro se, they do so at their own risk. See also **Kubik v. Burk**, 540 NW2d 60, 63 (Ct. App. 1995). Observing that lawyers and pro se litigants must follow the rules and those acting on their own behalf do not receive more deferential treatment. Accord, In **Re Estate of DeTar**, 572 NW2d 178, 180 (Ct. App. 1997). Courts will not speculate on arguments a party might have made and then search for legal authority and comb the record for facts to support such arguments. Skeletal arguments are really nothing more than assertions, and will not preserve claims. **Young v. Gregg**, 480 NW2d 75, 78 (Iowa 1992); **Zamora v. State**, 2019 Iowa App. Lexis 83 (S. Ct. #18-0007 - January 23, 2019).

And, any prose supplemental briefs or designations filed beyond the 15-day period by a properly served defendant or appellant will not be considered by the court and no response by the State will be required or allowed. **Gamble v. State**, 723 NW2d 443, 447n.7 (Iowa 2007).

Furthermore, our appellate rules of procedure and judicial restraint expect claims raised on appeal be specific. See: **State v. Tyler**, 867 NW2d 136, 166 n.14 (Iowa 2015)(indicating a "passing reference" in a brief is insufficient); **Hylar v. Garner**, 548 NW2d 864, 876 (Iowa 1996)("[W]e will not speculate

on the argument [a claimant] might have made and then search for legal authority and comb the record for facts to support such arguments."). A party who fails to satisfy this standard risks waiving the issue. **Iowa R. App. P. 6.903(2)(g)(3)** (Provides that failure to cite authority may be deemed a waiver). **Goode v. State**, 920 NW2d 520, 524 (Iowa 2018).

III. THE CHANGES TO IOWA CODE SECTIONS 814.6A AND 822.3B IF CONSTITUTIONAL CAN NOT BE APPLIED RETROACTIVELY.

Because S.F. 589's amendment to sections 814.6A and 822.3B prohibit PCR applicants and PCR Appellants (**Hrbek**) who are represented by counsel from filing prose documents or otherwise participating in having its issues heard and adjudicated, S.F. 589's amendments eliminate or limits substantive rights¹ that were available to Hrbek when his PCR application was filed, and should only be applied prospectively, if at all considering there is not needed in light of all the other judicial restraints.

Indeed, the Iowa Code's general savings provision renders the change(s) in Iowa Code sections 814.6A & 822.3B inapplicable to prisoners

¹ A substantive statute creates, defines, and regulates rights. A substantive statute also takes away vested rights. A procedural statute affords the practice, method, procedure, or legal machinery by which a person may enforce substantive law. A remedial statute gives an injured person a private remedy for a wrongful act. Generally, a remedial statute is designed to correct an existing law or redress an existing grievance. See: *City of Waterloo v. Bainbridge*, 749 N.W.2d. 245, 249 (Iowa 2008) (internal citations omitted); see also, *Didinger v. Allsteal, Inc.*, 860 N.W.2d. 557, 563 (Iowa 2015) (quoting, *Anderson Fin. Services v. Miller*, 769 N.W.2d. 575,578 (Iowa 2009)).

such as Hrbek who had their PCR applications on file and have a right to appeal pursuant to §822.9 before the amendments went into effect.

1. The reenactment, revision, amendment, or repeal of a statute does not affect any of the following:

a) The prior operation of the statute or any prior action taken under the statute.

b) Any validation of the statute or penalty, forfeiture, or punishment incurred in respect to the statute, prior to the amendment or repeal.

c) Any violation of the statute or penalty, forfeiture, or punishment incurred in respect to the statute, prior to the amendment or repeal.

d) Any investigation, proceeding, or remedy in respect of any privilege, obligation, liability, penalty, forfeiture, or punishment; And the investigation, proceeding, or remedy may be instituted, continued, or enforced, and the penalty, forfeiture, or punishment imposed, as if the statute had not been repealed or amended.

Iowa Code, §4.13(2019).

Before the effective date of section 814.6A and 822.3B (July 1, 2019), Hrbek had substantive rights to file supplemental prose documents, briefs and to participate fully. Hrbek's right(s) to actively participate and be heard cannot be retroactively removed by the newly amended statutes. See: **Brewer v. Iowa District Court for Pottawattamie County** 395 NW2d 841, 843 (Iowa 1986). ("If it had been the purpose of the 1984 amendment [adding a 3-year statute of limitation to the PCR statute], to abate pending proceedings or to limit the time

for commencing a new PCR, we believe the legislature would have made that intention clear."). See also, **Frink v. Clark**, 285 NW 681, 684 (1939)("This court has expressly recognized that, after the commencement of an action, the question of jurisdiction is purely judicial and a legislative act, which attempts to deprive the Court of jurisdiction, is unconstitutional.") **McSurely v. McGrew**, 118 NW 415, 418 (1908). ("These principles are so fundamental, as scarcely to need the citation of authorities in their support."). **Iowa Code, §4.5** (2019) Clearly states that statutes are presumed to operate prospectively unless they are expressly made retroactive. **Dindinger v. Allsteel, Inc.**, 860 NW2d 557, 562-63 (Iowa2015).

Therefore, in light of the substantive and vested rights in Iowa Code, §§822.2, 822.3 and §822.9, notwithstanding our Courts' precedents in **Leonard, Gamble, and Jones**, Hrbek must be allowed to continue his active prose participation and supplemental filings in his PCR proceedings, this interlocutory appeal, and the subsequent appeal, if any, from a final judgment in the pending PCR action.

CONCLUSION

For the reasons stated in Division I, II, and III, above, Hrbek respectfully requests that this Court interpret Iowa Code, §§814.6A and 822.3B to operate prospectively and consider this pro se supplement brief, and allow Hrbek

to continue his active pro se participation and supplemental filing in the district court, inasmuch, that these new amendments improperly intrude upon the jurisdiction and inherent authority of our judicial branches of government.

No law that is contrary to the constitution may stand. **Iowa Const. art. XII, §1.**"Courts must under all circumstances, protect the supremacy of the constitution as a means of protecting our Republic form .of government and our freedoms." **Varnum v. Brien**, 763 NW2d 862, **875** (Iowa 2009). Our framers vest this Court with the ultimate authority, and obligation, to ensure no law passed by the legislature impermissibly invades an interest protected by the constitution.

Planned Parenthood of the Heartlands v. Reynolds ex rel State, 915 NW2d 206, 212-213 (Iowa 2018). "The obligation to resolve this grievance and interpret the constitution lies with this court." **Id.**

Hrbek further respectfully requests that this Court invalidate §§814.6A and 822.3B, as invading both the district and appellate court(s) delegated and inherent authority as stated in Division I, II, and III, above, because the retroactive application also violates Hrbek's equal protection,² due process,³ and

² Equal Protection, the Iowa constitution defines certain individual rights upon which the government may not infringe. **Iowa Const. art. 1 ("Bill of Rights")**. Equal protection of the law is one of the guaranteed rights. **Iowa Const. art. 1. §6.**

All of these rights and principles are declared and undeniably accepted as the supreme law of this State, against which no contrary law can stand. See: **Iowa Const. art. XII. §1 ("This constitution shall be the supreme law of this State, and any law inconsistent therewith, shall be void.")** See **Varnum v. Brien**, 763 N.W.2d. 862, 875 (Iowa 2009). Iowa courts have a duty to protect individual rights from over reaching government power. *Id.* @875-76.

When Individuals invoke the Iowa Constitutions' guarantees of freedom and equality, courts are bound to interpret those guarantees. In carrying out this fundamental and vital role, we must never forget that it is a constitution we are expounding. It speaks with principle, as we, in turn, must also.

the inalienable rights clauses.⁴

Respectfully submitted,



John Lee Hrbek
John Lee Hrbek
Anamosa State Penitentiary
406 North High Street
Anamosa, Iowa 52205-1157
Appellant - Pro Se.

Finally, it should be recognized that the constitution belongs to the people, not the government or even the judicial branch of government. See: **Iowa Const. art. 1, §2** ("All political power is inherent in the people. Government is instituted for the protection, security, and benefit of the people, and they have the right, at all times, to alter or reform the same, whenever the public good may require it.") While the constitution is the supreme law and cannot be altered by the enactment of an ordinary statute, the power of the constitution flows from the people, and the people of Iowa retain the ultimate power to shape it over time. See: **Iowa Const. art X ("Amendments to the Constitution." Id. @ 876** (internal case citations and quotation omitted).

³ Due Process claims are grounded in the guarantees of both the federal and State constitutions. **US Const. amends. V, XIV; Iowa Const. art 1, §9**. These due process provisions are nearly identical in scope, import and purpose. Accordingly, we typically interpret both in a similar fashion. **The Due Process Clauses** are understood to include two separate but related concepts. Both are at issue. The first, substantive due process prevents the government from interfering with rights implicit in the concept to ordered liberty. Its companion concept, procedural due process, acts as a constraint on government action that infringes upon an individual's liberty interest, such as the freedom from physical restraint. See: **State v. Seering**, 701 NW2d 655, 662 (Iowa 2005)(internal case citations, quotations, and brackets omitted).

⁴ **Inalienable Rights**, this Court has acknowledged that the constitutional protection embodied in Iowa's Inalienable Rights Clause "is not a mere glittering generally without substance or meaning." **State v. Osborne**, 154 NW 294, 200 (1915); see also, **Hoover v. Iowa State Highway Comm'n**, 222 NW 438, 439 (1928) (stating it was intended that article 1§1 was "to be enforced by the judiciary"). See generally, Joseph R. Grodin, Rediscovering the Stat Constitutional Right to Happiness and Safety, 25 Hastings Const. L.Q. 1, 22 (1997) (stating "most courts have assumed that the inalienable rights clauses have some judicially enforceable content"). We have held, this provision was intended to secure citizens' pre-existing common law rights (sometimes known as "natural rights") from unwarranted government restrictions. **May's Drug Stores v. State Tax Commission**, 45 NW2d 245, 250, (1950).

ATTORNEY'S CERTIFICATE OF COSTS

I, Philip B. Mears, Attorney for the Appellant, hereby certify that the cost of preparing the foregoing Appellant's Pro Se Brief was \$3.20.

RESPECTFULLY SUBMITTED,

/s/ Philip B. Mears
PHILIP B. MEARS

MEARS LAW OFFICE
209 E. Washington Street
Paul-Helen Building, Suite 203
Iowa City, Iowa 52240
(319) 351-4363 Office
(319) 351-7911 Fax
philmeas@mearslawoffice.com
AT0005330

ATTORNEY FOR APPELLANT

**CERTIFICATE OF COMPLIANCE WITH TYPEFACE
REQUIREMENTS AND TYPE-VOLUME LIMITATION**

This brief complies with the typeface requirements and type-volume limitation of Iowa Rs. App. P. 6.903(1)(d) and 6.903(1)(f)(1) or (2) because:

[X] this brief has been prepared in a proportionally spaced typeface using Times New Roman in size 14 and contains 4,361 words, excluding the parts of the brief exempted by Iowa Rs. App. P. 6.903(1)(f)(1)

/s/ Philip B. Mears
Signature

August 24, 2020
Date