IN THE SUPREME COURT OF IOWA

No. 22-0005
Polk County No. LACL148599

POLLY CARVER-KIMM, Plaintiff/Appellee

v.

KIM REYNOLDS, PAT GARRETT, GERD CLABAUGH, SARAH REISETTER, SUSAN DIXON, and STATE OF IOWA, Defendants/Appellants

APPEAL *from the* IOWA DISTRICT COURT
in and for POLK COUNTY

Honorable DISTRICT COURT JUDGE LAWRENCE P. MCLELLAN, *Presiding*

Conditional AMICUS BRIEF of the IOWA ASSOCIATION FOR JUSTICE

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CERTIFICATE OF SERVICE

I hereby certify that on the 9th day of August, 2022, I electronically filed this document with the Clerk of the Iowa Supreme Court using the Appellate EDMS system which will serve the following parties or their attorneys:

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IDENTITY & INTEREST OF AMICUS CURIAE

As stated in Iowa Association for Justice's (IAJ) Motion for Leave to File Amicus Curiae Brief filed contemporaneously with this brief, incorporated herein by reference, the IAJ is an organization comprised mainly of trial attorneys, including Plaintiffs' civil rights attorneys, and criminal defense attorneys. The association was founded in 1973 and its membership has ballooned to nearly 1,000 active members. IAJ is also associated with the Justice for All Political Action Committee which advocates for access to justice and the right to a jury trial for Iowa residents.

Headquartered in Des Moines, Iowa, the IAJ works to strengthen our civil and criminal justice systems. Members focus on personal injury, medical malpractice, product liability, family law, employment law, worker's compensation, and criminal defense. IAJ also hosts several continuing legal education seminars each year and hosts speakers from across the nation at their live and virtual events. IAJ members frequently rise to the district court bench, the Iowa Court of Appeals, and even to the Supreme Court. Thus, IAJ has a strong interest in participating in any case which involves interpreting the Iowa Constitution, or any new state legislation which would purport to reduce the rights of Iowans, or to strip rights from Iowans entirely.

The State's positions in this case, and the new qualified immunity statute at issue here, are exactly the types of legal arguments and legislation IAJ works tirelessly to stop, minimize, or

deter. The State's position on separation of powers and removal authority makes Governor Reynolds a virtual queen, not subject to constitutional limitations. The State's Chapter 22 arguments, asserting that Iowa Code chapter 22 is unclear and advances no important public policies in this state, are a literary slap in the face to every red-blooded Iowan with a desire and a "right" to know. And if the Court accepts the State's retroactivity arguments, the consequence will be that the legislature will be absolutely free to strip Iowans of their other accrued rights and interests. These are consequences IAJ cannot ignore. Win, lose, or draw, IAJ must *attempt* to be heard in this case. The future efficacy of our republican form of government in Iowa may very well depend upon the outcome of the parties' arguments in this case.

CERTIFICATE OF COMPLIANCE-AUTHORSHIP

Pursuant to Iowa Rule of Appellate Procedure 6.906(4)(d), counsel herein authored this brief in whole for the Iowa Association for Justice. No party's counsel contributed money to fund the preparation or submission of this brief. No other person contributed money to fund the preparation or submission of this brief.

/s/ Jessica A. Zupp. 8/9/22
Jessica A. Zupp, Attorney, Date

CERTIFICATE OF COMPLIANCE- BRIEF REQUIREMENTS

Pursuant to Iowa Rule of Appellate Procedure 6.906(4), the undersigned states that this brief complies with rule 6.903(1)(g) as cross-referenced by Iowa Rule of Appellate Procedure 6.906(4). This brief is prepared in Times New Roman, a proportionally spaced typeface, and contains 4,537 words, which is less than one-half the length permitted for Appellant's brief. See Iowa R. App. P. 6.903(1)(g) (permitting 14,000 words for a proportionally spaced typeface).

/s/ Jessica A. Zupp. 8/9/22
Jessica A. Zupp, Attorney, Date

ARGUMENT

I. POLLY CARVER-KIMM'S CLAIM FOR WRONGFUL DISCHARGE IS COGNIZABLE AGAINST THE EXECUTIVE OFFICIALS RESPONSIBLE FOR HER TERMINATION.

A. The Power to Appoint Does Not Include an Inherent Power to Remove.

A close study of the powers granted under Art. IV of the Iowa Constitution reveals that the constitution does not explicitly grant any removal authority to the state executive, let alone an unchecked, unreviewable, and universal removal authority. A grant of removal power, if given to a Governor, must be explicit. The courts of several states have found that mere separation of powers language does not impute removal authority to the state executive. *See, e.g., Field v. The People ex rel. McClernand*, 3 Ili. 79 (1839). Neither is that power imputed through explicit vesting of supreme executive power in the Governor nor through the explicit responsibility of the Governor to ensure faithful execution of the states' laws. *See, e.g*., *Bruce v. Mattock*, 111 S. W. 990 (Ark. 1908); *Halder v. Anderson*, 128 S. E. 181 (Ga. 1925); *Johnson v. Laffoon*, 77 S. W. (2d) 345 (Ky. 1935); *State ex rel. Weke v. Frazier*, 182 N. W. 545 (N.D. 1921); *State ex rel. Lyon v. Rhame*, 75 S. E. 881 (S.C. 1912); *State ex rel. Huckabee v. Hough*, 87 S. E. 436 (S.C. 1915). Even the explicit grant to the Governor to fill certain vacancies cannot be read as an explicit grant of removal power. *See, e.g., Page v. Hardin*, 8 B. Mon. (Ky.) 648 (1846); *Votteler v. Fields*, 23 S. W. (2d) 588 (Ky. 1926).

It is also inaccurate to draw comparisons between the removal authority of the United States President as supreme executive of the nation, and state Governors as supreme executive of their territories. While at first blush there may appear to be similarities, the removal power of the President and of Governors has been interpreted very differently by the United States Supreme Court and state supreme courts, as well as being decided on wholly different grounds. *See, e.g.,*

John Murdoch Dawley, *The Governor's Constitutional Powers of Appointment and Removal*, 22 Minn. L. Rev. 451, 477-78 (1938) ("In the case of the removal power, the United States courts and the state courts have traveled in opposite directions. Despite the fact that the United States constitution gives to the president no power to remove the officers, the supreme court has decided that a very extensive removal power can be implied, and is beyond legislative curtailment… But a majority of the state courts has [sic] decided just the opposite, holding that the power of removal cannot be implied from any of the elements depended on by the United States supreme court. In addition, when a state constitution has granted the power of removal to the governor, the court of that state has generally given the provision a very strict construction.") (citations omitted).

Courts have been charged with a wide array of adjudicatory and enforcement powers related to infringement of rights guaranteed by constitution, statute, and ordinance. In the past, the United States Supreme Court has found that those protections "would be drained of meaning were we to hold that the acts of a governor or other high executive officer have 'the quality of a supreme and unchangeable edict, overriding all conflicting rights of property and unreviewable through the judicial power of the Federal Government.'" *Scheuer v. Rhodes*, 416 U.S. 232, 248, 94 S. Ct. 1683, 1692 (1974) (citations omitted). The intention behind separation of powers is explicitly to provide a check and balance on the actions of the other branches, not to enshrine ultimate authority in one or the other.

While this separation of powers exists in both the United States and Iowa Constitutions, Iowa's separation of powers is even more robust. *See, e.g.,* Steven C. Cross, *The Drafting of Iowa's Constitution* ("The 1857 constitution provided for three branches and expressly prohibited any branch from exercising a function of the other. This explicit separation of powers

is a difference from the federal constitution which keeps the branches separate but does not explicitly say that they are separate."). Defendants misread this explicit separation of powers to provide expansive and unchecked powers to the Governor as state executive; this is, however, ahistorical and contrary to the framers' intent. *See Id* ("From 1846 to 1857, the Executive Article was changed somewhat in form but not really in substance. The governor was declared to have the 'supreme executive power', but there is otherwise little in the document which sets out exactly the nature of his executive power. The fact that the powers of the governor were undelineated by the constitution indicates that those who drafted it envisioned the governor as a weak officer performing routine duties. Indeed, the weakness of the office was accepted by governors who were not full-time executives and often spent time attending to other than governmental activities. A great deal of the power of the governor today resulted from subsequent statutory enactment and a somewhat related increase in prestige.").

In federal caselaw, the imputation of liability upon a state official for taking unconstitutional acts is well established, making sovereign immunity unavailable to tortious actions by the state official and applying to both injunctive relief and damages. *See Ex parte Young*, 209 U.S. 123, 159-60 (1908); *Scheuer*, 416 U.S. at 237-38. The Iowa Supreme Court has previously extended injunctive relief under *Young* to former state government employees. *See, e.g., Lee v. State & Polk County Clerk of Court*, 844 N.W.2d 668 (Iowa 2014). Similarly, Iowa caselaw declines to immunize state officials from unconstitutional acts by applying sovereign immunity, and instead holds such officials individually liable. *See, e.g., Harrington v. Schossow*, 457 N.W.2d 583, 588-89 (Iowa 1990) ("Likewise, we must conclude that the State cannot act to unilaterally bar a section 1983 action against an official in his or her individual capacity simply because the claim is not cognizable under chapter 25A of the Code. While Iowa Code section

25A.23 may act as a bar to suits against individual state employees under the state tort claims act, it does not follow that a federal cause of action is similarly barred. If such were the case, the State could immunize its employees and make enforcement of federal civil rights impossible against state officials. The State does not have the power to immunize its officials, acting in their individual capacity, from responsibility to the supreme authority of the United States.") (citations omitted). Even with the introduction of 669.14A, an expansive reading of immunity to state officials who commit unconstitutional acts is not just contrary to judicial precedent, but violative of beneficial public policy interests of Iowa's citizenry.

B. The Governor Lacks Constitutional and Statutory Removal Authority.

The Iowa Constitution purports to limit the Governor's ability to terminate employees or other civil officers. Article Three, Section Twenty provides that the Governor, judges and justices, and other "State officers" can be impeached and removed. Iowa Const. art. III, § 20. However, that same section goes on to provide that "other civil officers" can be removed "in such manner as the General Assembly may provide." *Id*. That means the legislature gets to decide how other employees are terminated, it is not the Governor's province. By contrast, in Article Four, Section Nine, regarding the powers of the Governor, there is no express power to remove or impeach anyone. Instead, the Governor's only power appears to be to "fill such vacancy" when there is one. Iowa Const. art. IV, § 10. Thus, while the Governor has the power to appoint people, she has no power to remove; that power belongs to the legislature.

There are other statutes which regulate employment in the various departments. Iowa Code section 7E.2, for example, provides that the "head of each department or independent agency shall, subject to approval of the governor" establish the "internal organization of the department. Iowa Code § 7E.2(4) (2021). Notably, there is no express power to terminate as a

component of organizing the department. Indeed, according to subsection 5, "…related management functions shall be performed under the direction and supervision of the head of the department or independent agency, unless otherwise provided by law." Iowa Code § 7E.2(5). Iowa Code section 7E.3(1) speaks similarly: "Each head of a department…shall, except as otherwise provided by law: Plan, direct, coordinate, and execute the functions vested in the department or independent agency." Iowa Code § 7E.3(1). Iowa Code chapter 135, related to the Iowa Department of Public Health specifically, says that the "director" shall employ "such assistants and employees as may be authorized by law, and the persons appointed shall perform duties as may be assigned to them by the director." Iowa Code § 135.6. Nowhere did the Iowa legislature, or the Iowa Constitution, grant an express power to the Governor to remove anyone.

By contrast, however, as a matter of state municipal law, there *is* removal authority. For example, Iowa Code section 372.15, provides that "all persons appointed to city office may be removed by the officer or body making the appointment, but every such removal shall be by written order." Iowa Code § 372.15. The removal document must "give the reasons", be "filed in the office of the city clerk," and a copy mailed to the employee to be removed. Iowa Code § 372.15. Also, the appointee or employee has the right to request a hearing under this section. Iowa Code § 372.15. Notably, no similar provision is set forth in the chapters falling under the ambit of the Iowa Department of Public Health even though it is clear that the Iowa legislature knew how to express removal powers—*if* it chose to do so. Since the legislature never granted the Governor, or her Directors, a removal power, then the Governor and her Directors are acting outside the scope of their authority, illegally, to terminate an employee without authority.

II. IT OFFENDS SEPARATION OF POWERS FOR THE LEGISLATURE TO GRANT SPECIAL IMMUNITIES TO GOVERNMENT ACTORS ONLY.

A. The Qualified Immunity Statute Invades the Judicial Function.

The Iowa Constitution, like its federal counterpart, divides government into three separate branches: legislative, executive, and judicial. *State v. Tucker*, 959 N.W.2d 140, 148 (Iowa 2021). The purpose of separation of powers is "to safeguard against tyranny". *Id*. Separation of powers has three aspects to it: 1) no branch of government can exercise powers which are forbidden to it, 2) no branch can exercise powers which are vested in another branch, and 3) no branch may *impair* another in the performance of its duties. *See, e.g., Id* ("…prohibits one department of the government from impairing another in the performance of its constitutional duties."); Iowa Const., art. III, §1 ("…no person charged with the exercise of powers properly belonging to one of these departments shall exercise any function appertaining to either of the others, except in cases hereinafter expressly directed or permitted.").

Whether there has been a violation of separation of powers is "context-specific." Tucker, 959 N.W.2d at148. There are no "rigid boundaries." *Id*. Text, precedent, tradition, and custom all play a role. *Id*. Past practice of individual branches of government can imply a "constitutional settlement" among the branches. *Id*. "On questions involving the separation of powers, 'this court shall make its own evaluation, based on the totality of circumstances, to determine whether [a] power has been exercised appropriately.'" *Id*.

Against this backdrop, the Iowa Constitution expressly vests the judicial function in the courts. Iowa Const. art. V, §1. At its core, the judicial function is "the power to decide and pronounce a judgment and carry it into effect." *Klouda v. Sixth Jud. Dist. Dep't of Corr. Servs*., 642 N.W.2d 255, 261 (Iowa 2002). The Court, as part of its judicial function, "shall have power to issue *all* writs and *process* necessary to secure justice to parties". Iowa Const., art. V, §4

(emphasis added). It also has the power to "exercise a supervisory control over all inferior judicial tribunals throughout the state." *Id*. District courts "shall be a court of law and equity" and district courts shall "have jurisdiction" in such manner "as shall be prescribed by law." Iowa Const. art. V, §6. Notably, in section 6, the Constitution does not say which branch prescribes the "law" for jurisdiction in law and equity cases in district court; by contrast, however, the Constitution *expressly says* that the "General Assembly" may restrict appellate jurisdiction. Iowa Const. art. V, §3. Impliedly, then, the "General Assembly" is not in charge of prescribing the "law" of general jurisdiction for law or equity cases under Article V, Section 6 particularly.

The legislature's constitutional judicial role, on the other hand, is to "provide for the carrying into effect" of Article 5 and to provide for "*a* general system of practice in all the courts of this state." Iowa Const., art. V, § 14 (emphasis added to "a"). In creating a system, however, the legislature is expressly restricted from granting "to any citizen, or class of citizens, privileges or *immunities*, which, upon the same terms shall not equally belong to all citizens." Iowa Const. Art. I, §6 (emphasis added). Accordingly, by the plain text, although the legislature has some power to regulate the courts, its limited grant of constitutional authority *excludes* the power to grant special immunities to only certain groups of people, and it does not have the power to make the rules for *everything* court-related. There must be limits somewhere, or else one branch is executing the functions of another, and that violates separation of powers.

In a recent case involving whether new legislation unconstitutionally upset the separation of powers, *Tucker*, 959 N.W.2d at 149, the Court analyzed a statute which limited ineffective assistance claims to being made in post-conviction cases only, and did not allow such claims to be made on direct appeal. The Supreme Court, in dismissing Tucker's appeal, pointed out that, by its own terms, the Constitution *expressly* gave the legislature the power to limit appellate

jurisdiction. *Id*. The Constitution states that Supreme Court appellate jurisdiction is subject to "such restrictions as the general assembly may, by law, prescribe." *Id* (citing Iowa Const. art. V, §4). And the Court also noted that it is the legislature's constitutional role to provide for "a general system of practice", meaning the legislature can control the "method" for filing ineffective assistance claims. *Tucker*, 959 N.W.2d at 149. The Court noted, however, that even though the legislature has the general power to prescribe methods, the legislature cannot "arbitrarily decree that courts are without subject matter jurisdiction in a certain class of cases", nor can the legislative department "change the character of the court". *Id*. "Ultimately, '[f]or the judiciary to play an undiminished role as an independent and equal coordinate branch of government nothing must impede the immediate, necessary, efficient and basic functioning of the courts.'" *Id*.

In the case at issue, applying the qualified immunity legislation to the plaintiff's claims impairs the judicial function by eliminating certain kinds of cases unless they are pled with particularity, and which may only be brought if the law was already clearly established. This restriction precludes the courts from their core judicial function, a part of which is to recognize and set the parameters of causes of action in all equity and law cases.

Additionally, the new legislation impairs the judicial function by violating the word "a" in Article 5, Section14 of the Iowa Constitution. Under the Constitution, the legislature is supposed to create "a" system of practice, not two, three, or more systems. But, under the new statute, people who suffer identical injuries and harms can be treated differently: the person suing a private actor has an easy pleading burden, and does not have to contend with potential defense immunities; however, the person suing the government actor has a heightened pleading burden, and does have to contend with defense immunities. Not only does that put state

tortfeasors on a pedestal, and give them unconstitutional immunities to which the rest of us are not entitled, but it sets up *two* systems of justice, depending upon the nature of the tortfeasor, in violation of Article 5, Section 14 of the Iowa Constitution.

Beyond analyzing the plain text of the Iowa Constitution, other precedent, custom, traditions, and practices also show that the legislature's new qualified immunity statute is not constitutional. *Courts* have traditionally been the ones to determine whether an immunity exists, and what its boundaries are. For example, it was the Iowa Supreme Court which defined the boundaries of "absolute" immunity and "judicial process immunity" in *Venckus v. City of Iowa City*, 930 N.W.2d 792 (Iowa 2019) and *Lennette v. State*, 975 N.W.2d 380 (Iowa 2022). It was the Court which declared that "qualified immunity" required "all due care" in Iowa which is constitutionally broader than federal qualified immunity. *Baldwin v. City of Estherville*, 915 N.W.2d 259, 279 (Iowa 2018). Even when analyzing statutes which purport to grant statutory immunities, nonetheless, the Courts have always deemed immunities to be "a question of law for the court…". *Nelson v. Lindaman*, 867 N.W.2d 1, 7 (Iowa 2015) (analyzing statutory immunity under Iowa Code section 232.73 regarding participation in child abuse investigations). Indeed, "immunities" have been described by the Courts as "more than protection from liability", because they create an "entitlement not to have to stand trial or face the other burdens of litigation." *Id*.

Some immunities, therefore, can have the effect of invading the "judicial function" to hear law and equity cases *at all*, and thus, arguably upset constitutional language vesting law and equity jurisdiction in the district courts by completely eliminating certain causes of action. *Tucker*, 959 N.W.2d at 149 (describing limits on legislative authority to control the courts). Since determining the parameters of a cause of action is a judicial function, the Iowa Supreme

Court should declare that the new qualified immunity statute is unconstitutional as applied in this case.

III. THE NEW QUALIFIED IMMUNITY STATUTE SHOULD ONLY APPLY PROSPECTIVELY.

A. Legal History and Tradition Support Treating Iowa Code Section 669.14A As Prospective Only.

It is a long-established principle in law that there is a strong presumption against retroactive application of statutes unless expressly authored as such. *See, e.g.,* J. Paul Salembier, *Understanding Retroactivity: When the Past Just Ain't What It Used to Be*, 33 Hong Kong L.J. 99, 101 (2003) ("The presumptions [against retroactivity and interference with vested rights] are ancient in origin, having found their way from the Greeks to the Roman *Corpus Juris Civilis* and into the common law through the writings of Bracton and Coke in the 13th and 17th centuries respectively. With their direct lineage from Roman law to present civil law systems, these presumptions are now reflected in one way or another in all Western legal systems.") (citations omitted). This history has been codified in English common law. *See, e.g., R v. Guardians of Ipswitch Union*, (1877) 2 QBD 269, 270 ("It is a general rule that where a statute is passed altering the law, unless the language is expressly to the contrary, it is to be taken as intended to apply to a state of facts coming into existence after the Act."). It is well-used in federal jurisprudence in the United States, too. *See, e.g., Landgraf v. Usi Film Prods.*, 511 U.S. 244, 265, 114 S. Ct. 1483, 1497 (1994) ("As Justice Scalia has demonstrated, the presumption against retroactive legislation is deeply rooted in our jurisprudence, and embodies a legal doctrine centuries older than our Republic. Elementary considerations of fairness dictate that individuals should have an opportunity to know what the law is and to conform their conduct accordingly; settled expectations should not be lightly disrupted. For that reason, the 'principle that the legal

effect of conduct should ordinarily be assessed under the law that existed when the conduct took place has timeless and universal appeal.'") (citing *Kaiser Aluminum & Chemical Corp. v. Bonjorno*, 494 U.S. 827, 855 (1990)). It is also well-established in Iowa caselaw. *See, e.g., Iowa Beta Chapter of Phi Delta Theta Fraternity v. State*, 763 N.W.2d 250, 266 (Iowa 2009) ("Generally, a newly enacted statute is presumed to apply prospectively, unless expressly made retrospective.").

Two provisions of the Iowa Code should dictate the retroactivity result in this case. First, Iowa Code section 4.1(26), which governs "repeal" says that when a statute is repealed, it cannot take away rights of persons which already "accrued." Likewise, Iowa Code section 4.5 says that statutes are presumed to be prospective only unless *expressly* made retroactive. Indeed, there was mention of retroactivity during the legislative process. Retroactivity was mentioned in Senate File 342, §26 of Division VI, which states "The following applies retroactively to January 1, 2021: The portion of the section of this division of this Act enabling section 80.6A, subsection 1, paragraph 'b.' " *Senate File 342*, 89th General Assembly (2021). Since retroactivity was not mentioned regarding section 669A.14, it should be understood and implied that the legislature did *not* intend that section to be retroactive.

Reading these statutes together, as the Court should and usually does in other cases, the Court should determine that the new immunities cannot be applied retroactively, but in the alternative, even if they can apply retroactively in some cases, they cannot be applied to claims which already accrued. *See, e.g., Nixon v. State*, 704 N.W.2d 643, 646 (Iowa 2005). And of course, it is well-established that claims generally accrue when the acts occur and the harms are known; if claims only "accrue" when a petition is filed, a statute of limitations would never run.

In the case of plaintiff Carver-Kimm, all actions pertaining to her claim occurred prior to her termination on July 15, 2020. The initial filing of Carver-Kimm's claim on September 9, 2020 and amended filing on June 4, 2021 all occurred prior to the law's signing on June 17, 2021. Due to a scrivener's error regarding the enactment date, there is even affirmation from Secretary of the Senate W. Charles Smithson that the enactment date for Senate File 342 was June 17, 2021. *See Journal of the Senate (Iowa)*, July 1, 2021, 1166 ("[I]t is impossible for Senate File 342 to have been signed prior to June 17, 2021, and any earlier date is merely a scrivener's error and has no legal impact on the implementation of the bill."). Thus, Carver-Kimm's case should fit within the former qualified immunity statute, not the new one.

B. Qualified Immunity Doesn't Apply to the Type of Tort Involved in this Case.

In cases like the one at issue, the United States Supreme Court has declined to grant state executives absolute immunity, and has declined to outline a qualified immunity decision calculus; however, the Court has outlined the need for intensive scrutiny as to the intentions behind the official's actions. *See Scheuer*, 416 U.S. at 247-48 ("These considerations suggest that, in varying scope, a qualified immunity is available to officers of the executive branch of government, the variation being dependent upon the scope of discretion and responsibilities of the office and all the circumstances as they reasonably appeared at the time of the action on which liability is sought to be based. It is the existence of reasonable grounds for the belief formed at the time and in light of all the circumstances, coupled with good-faith belief, that affords a basis for qualified immunity of executive officers for acts performed in the course of official conduct."). Application of qualified immunity is not intended as a prophylactic for covering illegal conduct or violation of constitutional rights. *See, e.g.,* Stephanie E. Balcerzak, *Qualified Immunity for Government Officials: The Problem of Unconstitutional Purpose in Civil*

Rights Litigation, 95 Yale L.J. 126, 141 (1985) ("When an official is charged with a constitutional violation entailing gross abuse of his power and position, society has no interest in seeing that the burden of litigation is eased so that it does not interfere with the discharge of his duties. To the contrary, it is in society's interest to ensure that such conduct is unequivocally deterred. Consequently, in civil rights actions involving abuse of government power, the balance struck by the law of qualified immunity should shift in favor of compensating injured victims and deterring future misconduct.").

From a public policy standpoint, we have well-established and robust caselaw at the state and federal level protecting employees from firing for politically motivated reasons or for exercising guaranteed constitutional rights. In Iowa courts, "Wrongful discharge is an exception to Iowa's general rule that employment is at-will." *Jones v. Univ. of Iowa*, 836 N.W.2d 127, 144 (Iowa 2013). This is done for compelling public policy reasons under Iowa law. By way of example, in *Ackerman v. State*, the Iowa Supreme Court found that "When adopting the retaliatory discharge tort in *Springer*, we indeed relied, in part, on an at-will employee's need for protection from improper interferences with employment. Yet, we also relied on the need to guard against the undermining of legislative principles and schemes by employers who may 'abuse their power to terminate by threatening to discharge employees for' acting in accordance with declared public policies. Allowing contract employees to bring retaliatory discharge claims ensures that employers are not only held accountable to the wronged employee through contract damages, but are also deterred from future misconduct that is contrary to legislative schemes through tort damages." 913 N.W.2d 610, 620 (Iowa 2018) (citations omitted). *See also Bd. of County Comm'rs v. Umbehr*, 518 U.S. 668, 680, 116 S. Ct. 2342, 2350 (1996) (finding that "the

government has no legitimate interest in repressing" exercise of constitutional rights or duties of employees through termination or discriminatory behavior).

CONCLUSION

It does not violate the separation of powers to hold the governor and her officers accountable when they act illegally and outside the scope of their powers. As a matter of constitutional law, and statutory law, the Governor may have the power to appoint, but she has no power to terminate. Thus, she acted outside the scope of her power, so it cannot upset *separation* of powers, because she did not have the power to begin with. Her *actual* powers remain unchanged.

It does violate separation of powers, on the other hand, for the legislature to eliminate causes of action through the guise of immunities which only apply to a select few. The new immunity statute unconstitutionally sets up two systems of justice, one for people hurt by private persons, and another for persons hurt by the government. That system not only violates the word "a" found in the constitution, limiting the legislature's power to create a "system" of justice, but it also violates Iowa's privileges and immunities clause.

In the alternative, even if qualified immunity is constitutional, it should not be applied to this type of case, where the governor and her officers completely exceeded their powers by terminating someone for political reasons, and if qualified immunity should apply to this type of case, it should only apply prospectively, not retroactively.

The Iowa Supreme Court should affirm the district court's decision to deny the State's motion to dismiss. Polly Carver-Kimm's wrongful termination case should proceed to trial because she was wrongfully terminated in violation of public policy and the termination was a clear abuse of power, and power not granted to the state executive at that.