

**IN THE SUPREME COURT OF IOWA**

**No. 22-1010**

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**CORY BURNETT**

**Plaintiff-Appellant,**

**vs.**

**PHILLIP SMITH AND STATE OF IOWA**

**Defendants-Appellees.**

**APPEAL FROM THE IOWA DISTRICT COURT  
FOR JOHNSON COUNTY  
HONORABLE LARS ANDERSON, JUDGE**

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**APPELLANT'S FINAL REPLY BRIEF**

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## TABLE OF CONTENTS

TABLE OF CONTENTS	2
TABLE OF AUTHORITIES	3
STATEMENT OF THE ISSUES	5
REPLY ARGUMENT	8
<b>ISSUE I: SMITH MUST SHOW “ACTIVE INTERFERENCE”</b>	8
<b>ISSUE II: THE IOWA CONSTITUTION IS THE SUPREME LAW OF THE STATE OF IOWA.</b>	10
<b>ISSUE III: THE COURT IS TASKED WITH PROTECTING AN INDIVIDUAL FROM GOVERNMENT OVERREACH</b>	14
CONCLUSION	16
CERTIFICATES	17

## TABLE OF AUTHORITIES

### Iowa Cases

<i>Baldwin v. City of Estherville</i> , 915 N.W.2d 259 (Iowa 2018) (“ <i>Baldwin I</i> ”)	14
<i>Godfrey v. State of Iowa</i> , 898 N.W.2d 844 (Iowa 2017) ( <i>Godfrey II</i> )	12-15
<i>State v. Betts</i> , 2016 Iowa App. LEXIS 531 (Iowa App. Ct. 2016)	8-9
<i>State v. Parsons</i> , 2010 Iowa App. LEXIS 759 (Iowa Ct. App. 2010)	9-10
<i>State v. Smithson</i> , 594 N.W.2d 1 (Iowa 1999)	8-10
<i>Varnum v. Brien</i> , 763 N.W.2d 862 (Iowa 2009)	11,15
<i>Wagner v. State of Iowa</i> , 952 N.W.2d 843 (Iowa 2020)	14

### Federal Cases:

<i>Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics</i> , 403 U.S. 388 (1971)	14-15
<i>Egbert v. Boule</i> , 142 S. Ct. 1793 (2022)	14

### Iowa Statutes

Iowa Tort Claims Act (Chapter 669)	11, 14
Iowa Code §669.14(4)	11
Iowa Code §719.1	8

## **Constitutional Provisions**

Iowa Bill of Rights	12-13
Iowa Const. art. I	12
Iowa Const. art. I, § 8	13-16
Iowa Const. art. I, § 9	12
Iowa Const. art. I, § 11	13
Iowa Const. art. X	13
Iowa Const. art XII, §1	11-12
U.S. Const. Amend. IV (Fourth Amendment)	14-15

## **Other Authorities**

Perry, <i>The Iowa State Constitution</i> (2018)	11
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## **STATEMENT OF THE ISSUES**

### **ISSUE I: SMITH MUST SHOW “ACTIVE INTERFERENCE”**

#### **Iowa Cases**

*State v. Betts*, 2016 Iowa App. LEXIS 531 (Iowa App. Ct. 2016)

*State v. Parsons*, 2010 Iowa App. LEXIS 759 (Iowa Ct. App. 2010)

*State v. Smithson*, 594 N.W.2d 1 (Iowa 1999)

#### **Iowa Statutes**

Iowa Code §719.1

### **ISSUE II: THE IOWA CONSTITUTION IS THE SUPREME LAW OF THE STATE OF IOWA.**

#### **Iowa Cases**

*Baldwin v. City of Estherville*, 915 N.W.2d 259 (Iowa 2018) (“*Baldwin I*”)

*Godfrey v. State of Iowa*, 898 N.W.2d 844 (Iowa 2017) (*Godfrey II*)

*Varnum v. Brien*, 763 N.W.2d 862 (Iowa 2009)

#### **Iowa Statutes**

Iowa Chapter 669 (Iowa Tort Claims Act)

Iowa Code § 669.14(4)

#### **Constitutional Provisions**

Iowa Bill of Rights

Iowa Const. art I

Iowa Const. art. I, § 8

Iowa Const. art. I, § 9

Iowa Const. art. I, § 11

Iowa Const. art. X

Iowa Const. art XII, §1

### **Other Authorities**

Perry, *The Iowa State Constitution* (2018)

## **ISSUE III: THE COURT IS TASKED WITH PROTECTING AN INDIVIDUAL FROM GOVERNMENT OVERREACH.**

### **Iowa Cases**

*Baldwin v. City of Estherville*, 915 N.W.2d 259 (Iowa 2018) (“*Baldwin I*”)

*Godfrey v. State of Iowa*, 898 N.W.2d 844 (Iowa 2017) (*Godfrey II*)

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### **Iowa Statutes**

Iowa Tort Claims Act (Chapter 669)

## **Constitutional Provisions**

Iowa Const. art. I, § 8

U.S. Const. Amend. IV (Fourth Amendment)

## REPLY ARGUMENT

Many of the arguments raised by Smith in his brief are already discussed in Mr. Burnett's initial brief. Therefore, Mr. Burnett will limit his comments to several important points.

### ISSUE I: SMITH MUST SHOW "ACTIVE INTERFERENCE"

Iowa law requires proof of *active interference* in order to charge an individual with a violation of Iowa Code §719.1. *State v. Smithson*, 594 N.W.2d 1 (Iowa 1999). There is no proof in the summary judgment record that provides support for any *active* interference by Mr. Burnett.

Smith argues that Mr. Burnett's conduct was similar to the conduct of Brenna Betts in *State v. Betts*, 2016 Iowa App. LEXIS 531 (Iowa App. Ct. 2016), but a review of the facts of that case undermine that argument:

First, we note that the complaint and affidavit for the charge of interference with official acts indicates that Betts refused to return to her car when asked and refused to get in the squad car when she was told. *It also indicates that when the officers tried to remove Betts from the squad car, "she began to struggle with [them] and tried to kick [Officer Albers] in the groin."* As such, our review is not constrained to whether Betts's failure to get in her car or the squad car amounts to interference.

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Here, we believe sufficient evidence exists to support Betts's conviction for interference with official acts. *Betts actively resisted arrest.* When Officer Albers first told her she was under arrest, she refused to put her daughter down to be handcuffed and refused to get in the squad car. After she eventually got in the squad car, she refused to get out even after multiple orders from the officers to exit the vehicle. Once the officers pulled her out of the vehicle, she struggled against them before making her body go limp.

She clung to her daughter—and instructed her four-year-old daughter to do likewise—rather than letting the officers remove her daughter from the scene. Betts maintains failure to cooperate does not rise to interference with official acts, *but Betts's conduct rose to active interference.*

*Betts* at \*8-10 (Emphasis added).

There is no evidence in the summary judgment record that Mr. Burnett ever actively interfered, much less resisted arrest.

Smith also cites to *State v. Parsons*, 2010 Iowa App. LEXIS 759 (Iowa Ct. App. 2010). Again, the facts of that case undermine the argument that Mr. Burnett's conduct was actively interfering. That case involved an investigation immediately after a shooting in which the police officers stopped a vehicle and, with guns drawn, surrounded a vehicle. Mr. Parsons came out of his home and approached the officers, arguing with them, and diverting their attention from a potentially dangerous situation. After being told multiple times to leave the area, and continuing to return to argue with the officers, Mr. Parsons was arrested for interfering with official acts. In the course of a search of his body the officers found marijuana. This led to a charge of possession of marijuana. He was never charged with interfering with official acts. Nevertheless, the court found that his active interference in a dangerous situation provided probable cause for the search of his body. The Court in *Parsons* distinguished the facts of that case from *Smithson*:

In contrast to *Smithson...*, where the court found the defendant's failure to abide by an officer's single request to turn down music did not constitute interference with official acts, Parsons refused to comply with the officers' request to back up from the scene at least three times, making the officers concerned for their safety. Therefore, Parsons's arrest is supported by probable cause because a reasonable person could conclude he actively interfered with official duties, *rather than merely failed to cooperate*, and, thus, the search was reasonable.

*Parsons* at \*11.

Mr. Burnett chose not to assist the officer. He did not hinder or obstruct the officer in the performance of his duties. Certainly, he never placed the officer at risk for his safety. There is no evidence to support the contention that Mr. Burnett either resisted or obstructed the inspection of the vehicle.

## **ISSUE II: THE IOWA CONSTITUTION IS THE SUPREME LAW OF THE STATE OF IOWA.**

Smith's legal position is that the State and its employees are permitted to do what they want—including arresting people without a legal basis---because the Iowa Constitution is without legal authority to hold them accountable. To Smith, the Iowa Constitution is impotent and can only be used as a defensive weapon. Citizens of the State of Iowa must suffer through false arrests, wrongful prosecutions, and abusive treatment and have no right to expect that the Constitution will provide them with a remedy for illegal government activity.

Chapter 669 does not permit a claim for “assault, battery, false imprisonment, false arrest, malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit, or interference with contract rights.” Iowa Code §669.14(4). Therefore, as it applies to its State government, the citizenry must rely solely upon the Iowa Constitution to provide them with redress for wrongful conduct by the government. Yet, Smith argues that no such claim should be permitted, and no such claim is recognized as self-executing by the Iowa Constitution. In short, Smith claims that the “government can do no wrong” and when it does it cannot be held accountable. It is omnipotent.

Article XII, §1 provides that:

This Constitution shall be the supreme law of the State, and any law inconsistent therewith, shall be void. The General Assembly shall pass all laws necessary to carry this Constitution into effect.

Smith argues that the second sentence of this article delegated responsibility for protecting the constitutional rights of its citizens to the legislature. This argument is without legal support.

“By declaring that the Iowa Constitution is the state’s supreme law, Section 1’s first sentence serves a function comparable to the Supremacy Clause of the U.S. Constitution.” Perry, *The Iowa State Constitution*, p.302 (2018). In *Varnum v. Brien*, 763 N.W.2d 862, 876 (Iowa 2009), this Court recognized that it is the Court’s obligation to “protect constitutional rights of individuals from legislative

enactments that have denied those rights, even when the rights have not yet been broadly accepted, were at one time unimagined, or challenge a deeply ingrained practice or law viewed to be impervious to the passage of time.”

In *Godfrey v. State of Iowa*, 898 N.W.2d 844 (Iowa 2017) (*Godfrey II*), this Court concluded that the second sentence of article XII, §1 did not delegate to the legislature the power to limit constitutional rights. Such power remains with the judiciary:

The defendants contend that the sentence in section 1 that provides, "The general assembly shall pass all laws necessary to carry this constitution into effect" means that the provisions of the Iowa Bill of Rights in article I are not self-executing but require legislative action to be enforced. See Iowa Const. art. XII, § 1. *Godfrey*, on the other hand, contends that article XII, section 1 only requires the general assembly to pass laws "necessary" to carry "this" constitution in effect.

On this point, we agree with *Godfrey*. In context, we think the clear meaning of article XII, section 1 is to require the general assembly to put "this" new constitution into operation and to provide for the transition from government under the prior constitution to the new regime. *The language in article I, section 1 was not meant to dramatically undermine effective judicial enforcement of the Iowa Bill of Rights by making remedies dependent upon legislative whim.*

Further, a survey of the original 1857 Iowa Constitution demonstrates the framers knew how to use language that required the general assembly to act. There are several provisions of the constitution that expressly require the general assembly to take certain actions to implement it.

Such requirements of action by the general assembly are notably absent from the Bill of Rights of article I of the Iowa Constitution with two exceptions. The general assembly "may authorize" a jury of less than twelve under article I, section 9. Iowa Const. art. I, § 9. Additionally, the general assembly

"may provide" that persons may be held to answer for a criminal offense without the intervention of a grand jury. *Id.* art. I, § 11. But other than these two provisions, nothing in the Iowa Bill of Rights requires legislative action to ensure enforcement.

We think it clear that section 1 of the schedule article cannot swallow up the power of the judicial branch to craft remedies for constitutional violations of article I. *The rights established in the Iowa Bill of Rights are not established by legislative grace, but by the people in adopting the constitution.* The Iowa Bill of Rights was a big deal to the framers. We divine no desire of the 1857 framers to prevent the Iowa judiciary from performing its traditional role from a schedule article requiring the general assembly to enact necessary laws for the transition to the new constitutional government. The rights and remedies of the Bill of Rights are not subject to legislative dilution as "there is no elasticity in the specific guaranty of the Constitution." It would be a remarkable development to allow a provision in the schedule article of the Iowa Constitution to eviscerate the power of courts to provide remedies for violations of the people's rights established in article I, the article which the framers plainly thought, bar none, contained the most important provisions in the Iowa Constitution.

*Godfrey II* at 868-870 (emphasis added). To delegate to the legislature the ability to control the constitutional rights of Iowans is to undermine the purpose of a Constitution. Constitutional rights would be subject to legislative amendment every 2 or 4 years at the ballot box. Yet, article X provides for the mechanism to amend the Iowa Constitution and until such an amendment, "the right of the people to be secure in their persons, houses, papers and effects, against unreasonable seizures and searches shall not be violated" by any governmental authority. Article I, §8.

This Court *must* reject the State of Iowa’s argument that the Legislature has sole control of what Constitutional rights are protected by reinforcing its opinion in *Godfrey II*.

**ISSUE III: THE COURT IS TASKED WITH PROTECTING AN INDIVIDUAL FROM GOVERNMENT OVERREACH.**

Smith contends that article I, §8 of the Iowa Constitution is not self-executing and has not yet been determined to be so by this Court. He is wrong on both counts.

As previously noted, this Court has implicitly recognized an article I, §8 constitutional tort claim. *Baldwin v. City of Estherville (Baldwin I)*, 915 N.W.2d 259 (Iowa 2018). Further, *Wagner v State of Iowa*, 952 N.W.2d 843 (Iowa 2020) involved a claim for excessive force under art. I, §8 and held that such claims are procedurally governed by the Iowa Tort Claims Act (Chapter 669). In *Godfrey II*, this Court described Iowa Constitutional tort claims as similar to *Bivens* claims. *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971) involved a Fourth Amendment claim for unlawful search and seizure.

Smith argues that the persuasiveness of *Bivens* has been impacted by the unwillingness of the United States Supreme Court to extend *Bivens* to other constitutional violations, citing *Egbert v. Boule*, 142 S. Ct. 1793 (2022) as support. The U.S. Supreme Court in *Egbert* cites to a series of cases in which it has refused to extend *Bivens* to other constitutional violation claims. *Egbert* at 1799-1800.

However, almost all of those cases cited had been published before this Court's decision in *Godfrey II*. In short, this Court was well aware of the status of *Bivens* when it made its own determination that tort claims under the Iowa Constitution were self-executing. There is no reason to conclude that claims under article I, §8 would not be entitled to the same protection afforded in *Godfrey II*.

This Court has an obligation to protect an individual's right to be free of governmental intrusion. *Bivens* at 407 ("the judiciary has a particular responsibility to assure the vindication of the constitutional interests such as those embraced by the Fourth Amendment."); *Varnum* at 875-76 ("The idea that courts, free from the political influences in the other two branches of government, are better suited to protect individual rights was recognized at the time our Iowa Constitution was formed.")

Mr. Burnett comes to this court with an expectation that the Iowa Constitution was intended to protect him from governmental overreach and that this Court will exercise the power granted to it by the Iowa Constitution to provide him with a remedy when such overreach occurs. To deny Mr. Burnett the right to vindicate those constitutional rights, is to deny the power of the Iowa Constitution. "It is also well established that courts must, under all circumstances, protect the supremacy of the constitution as a means of protecting our republican form of government and our freedoms." *Varnum* at 875.

## CONCLUSION

Mr. Burnett requests that the Court reverse the grant of summary judgment. Further, he requests entry of judgment in his favor on his article I, §8 claim and that the case be remanded for trial on damages only.

Respectfully submitted,

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**CERTIFICATE OF SERVICE AND FILING**

The undersigned certifies a copy of this Final Reply Brief was filed and served through the Electronic Document Management System on all counsel of record and the Clerk of Supreme Court.

                  /s/ Martin A. Diaz                  

**CERTIFICATE OF COST**

I further certify that because of use of EDMS, there was no cost associated with the printing and reproduction of this Final Reply Brief.

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**CERTIFICATE OF COMPLIANCE WITH 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)(g)(1) or (2) because:

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