IN THE SUPREME COURT OF IOWA
No. 22–1010

CORY BURNETT,

Appellant,

vs.

PHILLIP SMITH and STATE OF IOWA,

Appellees.

Appeal from the Iowa District Court for Johnson County
Lars G. Anderson, District Judge

APPELLEES' FINAL BRIEF

THOMAS J. MILLER
Attorney General of Iowa

JEFFREY S. THOMPSON
Solicitor General

B.J. TERRONES
Assistant Attorney General
1305 E. Walnut Street
Des Moines, Iowa 50319
(515) 281-5164
(515) 281-4209 (fax)
jeffrey.thompson@ag.iowa.gov
b.j.terrones@iowadot.us

ATTORNEYS FOR APPELLEES

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Constitutional Provisions

Regulations

Statutes

Other Authorities

ISSUES PRESENTED

I. Does a constitutional tort for damages exist under article I, section 8, of the Iowa Constitution?

Godfrey v. State, 898 N.W.2d 844 (Iowa 2017)
Egbert v. Boule, 142 S. Ct. 1793 (2022)
Iowa Const. art. I, § 8
Iowa Const. art. XII, § 1
Iowa Code § 669.26

II. Does an officer who arrests a driver for interference with official acts when the driver refuses to comply with the lawful inspection of his truck exercise all due care and avoid liability for a violation of article I, section 8 of the Iowa Constitution?

Baldwin v. City of Estherville, 915 N.W.2d 259 (Iowa 2018)
Iowa Code § 719.1

III. Is the dismissal of a criminal charge preclusive of any issue in a subsequent claim for criminal damages against the arresting officer and the State?

Harris v. Jones, 471 N.W.2d 818 (Iowa 1991)
Clark v. State, 955 N.W.2d 459 (Iowa 2021)

IV. Does section 669.14(4)'s exemption for claims arising from "false arrest" bar a tort claim that an arrest violated article I, section 8, of the Iowa Constitution?

Greene v. Friend of Court, Polk Cnty.,
406 N.W.2d 433 (Iowa 1987)
Wagner v. State, 952 N.W.2d 843 (Iowa 2020)
Iowa Code § 669.14(4)

ROUTING STATEMENT

The State agrees with Plaintiff Cory Burnett that the Supreme Court should keep this case. Whether a constitutional tort exists under article I, section 8, is a substantial issue of first impression. *See* Iowa R. App. P. 6.1101(2)(c). So too is it an urgent issue of broad public importance. *See* Iowa R. App. P. 6.1101(2)(d). District courts across the state are grappling with whether to extend *Godfrey v. State*, 898 N.W.2d 844 (Iowa 2017), to new contexts and thereby impose more liability and litigation costs on the State. The other alternative bases for deciding this case—the application of all-due-care immunity and the Iowa Tort Claim Act's exceptions to constitutional torts—are also substantial and important questions that should be decided by the Supreme Court in the first instance. *See* Iowa R. App. P. 6.1101(2)(c), (d), (f).

STATEMENT OF THE CASE

Plaintiff Cory Burnett sued Motor Vehicle Enforcement Officer Phillip Smith and the State of Iowa (collectively, "the State") over his arrest by Officer Smith for interference with official acts under Iowa Code section 719.1. Burnett asserted five common law and purported constitutional torts: (1) intentional infliction of emotional distress; (2) negligence; (3) inalienable rights under article I, section 1 of the Iowa Constitution; (4) unreasonable search and seizure under article I, section 8; and (5) substantive and procedural due process under article I, section 9. *See* App. 7 at ¶¶ 23–24.

More than a year after suit was filed, the State moved for summary judgment on all the claims. *See* App. 15–16. In response, Burnett withdrew his common law claims and cross-moved for partial summary judgment on his constitutional claims under article I, sections 1 and 8. *See* Pltf's Partial Withdrawal (Mar. 14, 2022); App. 84, 206.[1]

Burnett contended that Officer Smith lacked probable cause to arrest him for interference with official acts because he was not required to comply with Officer Smith's requests while inspecting his truck. He urged that this question was preclusively decided

[1] Burnett neither withdrew nor moved for summary judgment on his due-process claim under article I, section 9. *See* Pltf's Partial Withdrawal (Mar. 14, 2022); App. 84, 206.

when his criminal charge arising from the arrest was dismissed. And he thus argued that his arrest by Officer Smith violated his inalienable rights under article I, section 1, of the Iowa Constitution and was an unreasonable seizure under article I, section 8. *See* App. 107–26.

The State argued that Burnett's constitutional claims all failed as a matter of law. Among other reasons, it argued that that *Godfrey v. State*, 898 N.W.2d 844 (Iowa 2017), was wrongly decided and should not be extended to new constitutional provisions. App. 72. It argued that Officer Smith exercised all due care when arresting Burnett on "a good faith and reasonable belief that there was probable cause to do so." App. 75. And the State asserted that this suit was barred under section 669.14(4) because Burnett's claims are the functional equivalents of false arrest. *See* App. 66–67.

The district court agreed with the State that all the constitutional claims failed as a matter of law. *See* App. 209–11. The court thus granted the State's motion for summary judgment, denied Burnett's, and dismissed the case. *See* App. 215. Burnett unsuccessfully sought reconsideration from the district court. *See* App. 217–23, 240. And then he filed this timely appeal. *See* App. 242–44.

STATEMENT OF THE FACTS

Officer Smith is a specialized peace officer conducting enforcement activities, consistent with federal motor carrier safety regulations, that promote the safe and lawful movement of commercial motor vehicles and vehicles transporting loads. App. 24 at ¶ 4; *see also* Iowa Code § 321.477 (2019). On November 1, 2019, at approximately 11:06 a.m., Officer Smith indicated he was going to "stop this truck for an inspection. When I met him, it looked like he had a cracked windshield on IWB." Ex. E, at 11:06:40.[2] Officer Smith pulled over onto the shoulder of Highway 218 and approached the vehicle driven by Burnett. *Id.* at 11:07:45. Officer Smith intended to perform a level 2 inspection, which is a safety inspection of both the driver and his vehicle. App. 25, 39–40, 48–49.

Officer Smith asked Burnett: "How you doing today?" Ex. E, at 11:07:54. Officer Smith asked Burnett multiple times to operate his lights. *Id.* at 11:08:00. Burnett informed Officer Smith the officer could do the inspection. *Id.* at 11:08:30. Officer Smith told Burnett "I will but I can't operate the lights and walk around the truck." *Id.* at 11:08:35. Burnett informed Officer Smith Burnett did not have to do the inspection. *Id.* at 11:08:45.

Burnett told Officer Smith to "do your own inspection, man." *Id.* at 11:08:54. Officer Smith requested Burnett to "Go ahead and

[2] Exhibit E is the officer's dashcam recording of the incident.

turn your lights on for me" and then asked, "So you don't want to turn the lights on?" *Id.* at 11:09:05. Burnett advised Officer Smith Burnett was going to call his boss and tell him he was going to jail. *Id.* at 11:09:20. Officer Smith informed Burnett he pulled Burnett over because of the crack in the windshield. *Id.* at 11:09:58; App. 25, 31–34. Burnett responded by telling Officer Smith he was "fucking crazy" and asked him why the officer didn't just give him a ticket and let him go. Ex. E, at 11:10:15. Officer Smith told Burnett he was not going to cite him for the windshield. *Id.* at 11:10:18.

Burnett persisted in telling Officer Smith he wasn't going to play games today, and Burnett said either inspect the truck and let him go, or else take Burnett to jail. *Id.* at 11:10:27. Burnett even told Officer Smith he was fine with going to jail. *Id.* at 11:10:37. Officer Smith asked Burnett for his ID and Burnett told him he did not mind going to jail but was not going to keep playing this game with him. *Id.* at 11:10:42. Officer Smith then communicated the license information with dispatch. *Id.* at 11:12:35. Burnett proceeded to talk on his cell phone. *Id.* at 11:12:18.

Officer Smith asked Burnett, "Are you going to do the inspection or not?" *Id.* at 11:12:50. Burnett told Officer Smith to just take him to jail. *Id.* at 11:12:53. Officer Smith told Burnett if he didn't do the inspection, he was going to take him to jail. *Id.* at 11:12:56. After Burnett again informed Officer Smith he would go to jail,

Officer Smith directed Burnett to turn around and place his hands behind his back. *Id.* at 11:12:59. Burnett asked Officer Smith what he was going to jail for, and Officer Smith replied "interference." *Id.* at 11:13:03.

Burnett was placed under arrest for interference with official acts under Iowa Code section 719.1 and a complaint was filed with the clerk in Johnson County. App. 27–28. Officer Smith's narrative within the complaint indicated Burnett "knowingly resist[ed] or obstructed[ed] Officer Phil Smith in the performance of his lawful duty." App. 27. Officer Smith's statement of supporting facts indicated Burnett refused several times to operate any controls. *See* App. 28. Burnett was identified by his Iowa-issued CDL and placed under arrest for interference with official acts. *See id.* The charge was later dismissed by the court on January 10, 2020. App. 36.

Burnett then sued Officer Smith and the State. *See* App. 5–8. While he originally brought five common law and purported state constitutional claims, *see* App. 7 at ¶¶ 23–24, only one constitutional claim remains at issue. He withdrew his common law claims before the court ruled on them. See Pltf's Partial Withdrawal (Mar. 14, 2022); App. 206. And on appeal, Burnett only argues that his arrest was an unreasonable seizure in violation of article I, section 8, of the Iowa Constitution.

Ruling on the parties' cross-motions for summary judgment,

the district court agreed with the State that Burnett's claim under article I, section 8, of the Iowa Constitution fails as a matter of law. The court implicitly questioned whether a constitutional tort exists at all under article I, section 8, noting this Court's recent observations that *Godfrey* "'cited no Iowa precedent for a direct constitutional claim for damages against the State or state officials'" and that "'[i]n fact, Iowa precedent was to the contrary.'" App. 210 (quoting *Wagner v. State*, 952 N.W.2d 843, 857 (Iowa 2020)).

But the court held that "[e]ven if there is a direct constitutional claim under Article I, Section 8," Burnett "simply has offered no specific evidentiary fact showing a genuine issue of material fact on the question of whether Defendant Smith acted with anything other than 'all due care' in his interaction with Plaintiff." App. 210. The court also rejected Burnett's argument that the dismissal of his criminal case was preclusive because "[t]he parties in the criminal case are not the same as the parties to this case." App. 213. And it reasoned that Burnett's conduct refusing to "provide any assistance whatsoever to Defendant Smith in carrying out the inspection . . . provided probable cause for Defendant Smith to pursue the filing of charges" for interference with official acts. *Id.*

The court thus dismissed the case. *See* App. 215. The district court also denied Burnett's motion to reconsider its ruling. *See* App. 240. This appeal followed.

ARGUMENT

I. The district court properly dismissed Burnett's tort claim that Officer Smith violated article I, section 8, of the Iowa Constitution by arresting Burnett for interference with official acts when Burnett failed to comply with the inspection of his truck.

Burnett challenges the district court's grant of the State's motion for summary judgment and denial of his cross-motion on *one* constitutional tort claim: that his arrest by Officer Smith violated article I, section 8, of the Iowa Constitution. *See* Appellant's Br. at 35–44; *see also* App. 209–13, 215.[3] The State agrees that he preserved error. A district court's ruling on summary judgment is reviewed for "correction of errors of law." *Lennette v. State*, 975 N.W.2d 380, 388 (Iowa 2022). And state constitutional claims in that ruling "are reviewed de novo." *Id.*

---

[3] Burnett initially brought other common law and constitutional claims as well. *See* App. 7 at ¶¶ 23–24 (asserting common law torts of intentional infliction of emotional distress and negligence and constitutional torts under sections 1, 8, and 9, of article I of the Iowa Constitution). But he withdrew his common law claims in the district court. *See* Pltf's Partial Withdrawal (Mar. 14, 2022); App. 206. And now on appeal, Burnett argues only that his claim under article I, section 8, should have been successful. *See* Appellant's Br. at 18–44. He doesn't even mention other constitutional provisions except in passing while describing or quoting this Court's decisions in *Godfrey v. State*, 898 N.W.2d 844 (Iowa 2017) and *Baldwin v. City of Estherville*, 915 N.W.2d 259 (Iowa 2018). *See* Appellant's Br. at 35–38; *see also id.* at 5, 13–44. Any claim of error for the dismissal of his other constitutional claims is thus waived. *See* Iowa R. App. P. 6.903(2)(g)(3); *Hrbek v. State*, 958 N.W.2d 779, 788 (Iowa 2021).

But the district court didn't err in dismissing Burnett's constitutional tort claim. The court questioned whether this Court would recognize such a claim for damages under article I, section 8, of the Iowa Constitution. *See* App. 210. And this Court should answer what the district court could not: a constitutional tort doesn't exist under article I, section 8 of the Iowa Constitution. Whatever the continued validity of *Godfrey v. State*, 898 N.W.2d 844 (Iowa 2017), it shouldn't be extended to this new context because it was wrongly decided.

Even if the constitutional tort does exist, the district court properly held that Officer Smith exercised all due care in his arrest of Burnett. *See* App. 210. The dismissal of Burnett's criminal case arising from the challenged arrest isn't preclusive of any issue here because Officer Smith and the State weren't parties to that criminal case. *See* App. 213. And regardless of any of these other issues, this suit is barred by Iowa Code section 669.14(4) because Burnett's claim is the functional equivalent of false arrest.

A. This Court should not recognize a constitutional tort under article I, section 8, of the Iowa Constitution because *Godfrey* was wrongly decided and should be overruled or at least not extended to this new context.

Burnett cannot maintain his claim for damages under article I, section 8, of the Iowa Constitution because no such tort exists.

As a threshold matter, Burnett mistakenly argues that this Court has already decided that a claim for damages can be asserted directly under article I, section 8. *See* Appellant's Br. at 37. But only a due-process constitutional tort has ever been held to exist by the Iowa Supreme Court. *See Godfrey*, 898 N.W.2d at 875–76. And Burnett doesn't cite a single case to the contrary.

Baldwin v. City of Estherville, 915 N.W.2d 259 (Iowa 2018), didn't hold that *Godfrey* "applied" to article I, section 8, or that article I, section 8, is self-executing. Appellant's Br. at 37. *Baldwin* was a certified question case, and the Court only answered the questions certified to it. *See Baldwin*, 915 N.W.2d at 260. The federal court didn't ask the Court to assess whether the provisions were self-executing. Nor did the parties or amici in their briefs analyze whether either section was self-executing. It is unsurprising then, that the Court did not reach an issue that neither the parties nor certifying court asked it to reach. *See Baldwin*, 915 N.W.2d 259; c*f. Stevens v. Stearns*, 833 A.2d 835, 841–42 (Vt. 2003) (adopting qualified immunity standard without deciding whether plaintiff's state constitutional tort claim was actionable). The Court answered the specific questions posed and no more.

Now that the issue *is* presented, this Court should decline to extend *Godfrey* to article I, section 8, or overrule the case entirely. The Court in *Godfrey* misread the Iowa Constitution. *See Godfrey*,

898 N.W.2d at 868–70. Our framers were explicit that the Iowa Constitution is not self-executing, instead instructing "[t]he general assembly shall pass all laws necessary to carry this Constitution into effect." Iowa Const. art. XII, § 1. Article XII, section 1, is not a transitional clause. It's an allocation of power: the body charged with creating constitutional causes of action is the Legislature, not the Judiciary. *See also Bandoni v. State*, 715 A.2d 580, 595 (R.I. 1998); *Roberts v. Millikin*, 93 P.2d 393, 398 (Wash. 1939) ("The express mandate that the legislature should, without delay, pass the necessary laws to carry out the provisions of the constitution and facilitate its operation, implies that this provision was not deemed self-executing, but required legislation to make it operative.").

The Legislature may, at any time, enact its own version of the federal section 1983 statute, *see* 42 U.S.C. § 1983, and authorize damages for violating the Iowa Constitution. Overruling *Godfrey* wouldn't thus prohibit constitutional tort claims for all time; it would just return the issue of whether and how to authorize such claims to the proper constitutional branch.

But for now, the Legislature has not done so. Indeed, the Legislature recently reaffirmed that it has not waived sovereign immunity for any state constitutional tort claims. *See* Act of June 17, 2021 (Senate File 342), ch. 183, § 13, 2021 Iowa Acts 715, 719 (cod-

ified at Iowa Code § 669.26 (2022)) ("This chapter shall not be construed to be a waiver of sovereign immunity for a claim for money damages under the Constitution of the State of Iowa.").

Godfrey also misapplied Iowa precedent. The plurality "cited no Iowa precedent for a direct constitutional claim for damages against the State or state officials. In fact, Iowa precedent was to the contrary." *Wagner v. State*, 952 N.W.2d 843, 857 (Iowa 2020). "In the one hundred and sixty years between the adoption of the constitution and *Godfrey*, this court had never recognized a constitutional tort claim. And for good reason: there was and is no such cause of action." *Lennette v. State*, 975 N.W.2d 380, 402 (Iowa 2022) (McDonald, J., concurring). When a century's worth of cases must be overturned or contorted just to sustain one case, the case is worth revisiting. *See Post v. Davis Cnty.*, 191 N.W. 129, 135 (Iowa 1922) (overturning case because adhering to its precedent required "overturning principles which have been universally recognized as fundamental").

And *Godfrey* rested on federal precedent that can no longer bear the weight placed on it. The *Godfrey* Court heavily relied on *Bivens v. Six Unnamed Agents of the Federal Bureau of Narcotics*, 403 U.S. 388 (1971). *See Godfrey*, 898 N.W.2d at 851–56, 65–67, 75–77 (following the reasoning of *Bivens* when creating the claim and repeatedly framing it as a "*Bivens*-type" claim). While *Godfrey*

acknowledged the federal trend against recognizing *Bivens* claims, it nevertheless instructed that "the continuing viability of federal *Bivens* claims would be important only if later cases cast doubt on the reasoning of the original opinion." 898 N.W.2d at 855.

Later cases *have* now cast doubt on the reasoning of the original *Bivens* opinion. In *Ziglar v. Abbasi*, the U.S. Supreme Court cautioned that since *Bivens*, "the arguments for recognizing implied causes of action for damages began to lose their force." 137 S. Ct. 1843, 1855 (2017). When implying a cause of action, the guiding principle is "one of statutory intent." *Id.* Yet "[w]ith respect to the Constitution, . . . there is no single, specific congressional action to consider and interpret." *Id.* at 1856. Moreover, it was a "significant step under separation-of-powers principles for a court to determine that it has the authority, under the judicial power, to create and enforce a cause of action for damages against federal officials in order to remedy a constitutional violation." *Id.* Creating such a cause of action requires balancing "economic and governmental concerns." *Id.* "Congress, then, has a substantial responsibility to determine whether, and the extent to which, monetary and other liabilities should be imposed upon individual officers and employees of the Federal Government." *Id.* Given these concerns, "the analysis in the Court's three *Bivens* cases might have been different if they were decided today." *Id.*

And this past term, the Supreme Court again refused to extend *Bivens*, this time in a search-and-seizure case materially akin to *Bivens* itself. *Egbert v. Boule*, 142 S. Ct. 1793 (2022). The Court explained it had "come 'to appreciate more fully the tension between' judicially created causes of action and 'the Constitution's separation of legislative and judicial power.'" *Id.* at 1802 (quoting *Hernández v. Mesa*, 140 S. Ct. 735, 741 (2020)). "At bottom, creating a cause of action is a legislative endeavor. . . . Unsurprisingly, Congress is 'far more competent than the Judiciary' to weigh such policy considerations. And the Judiciary's authority to do so at all is, at best, uncertain." *Id.* at 1802–03 (quoting *Schweiker v. Chilicky*, 487 U.S. 412, 423 (1988)) (internal citation omitted).

"The doctrine of 'stare decisis' is, of course, founded on reason, but it should not be applied in such a manner as to banish reason from the law." Buell McCash, *Ex-Delicto Liability of Counties in Iowa*, 10 Iowa L. Bull. 16, 36 (1924), *available at* https://perma.cc/A5MZ-5FYV. While this Court does not "overturn [its] precedents lightly," it will do so when "the prior decision was clearly erroneous." *McElroy v. State*, 703 N.W.2d 385, 394 (Iowa 2005).

If the Court gives meaning to article XII, section 1 of the Iowa Constitution, follows its common law precedent, and recognizes

that *Bivens* is no longer a load-bearing wall, little of *Godfrey* survives. *Godfrey* should be overturned now. Or at least it should be limited to its narrow context and not extended any further.

This Court has been in a similar position before. In 1862, the Iowa Supreme Court allowed a county to be sued for damages arising out of a purported failure to maintain county bridges, despite no legislation authorizing such damages. *Wilson v. Jefferson Cnty.*, 13 Iowa 181, 184–85 (1862). The *Wilson* decision was unprecedented—counties had long been recognized as involuntary divisions of the state whose creation and liabilities were exclusively statutory. *See generally* McCash, 10 Iowa L. Bull. 16.

Opening the door to governmental liability placed the Court "in an unenviable position; it was being constantly importuned to overrule the doctrine it had so long adhered, on the basis of *stare decisis* though indefensible in principle, and with the same frequency it was being beseeched to extend the rule which with equal reason should attach to other negligent acts of public servants." *Id.* at 29.

But the Court eventually recognized its error and refused to extend *Wilson* beyond the strict facts of the case. Even when factual distinctions were "not very plain nor easily demonstrated," the Court refused "to carry the doctrine further than is necessary to sustain the [prior] decisions of the court." *Kincaid v. Hardin Cnty.*,

5 N.W. 589, 592 (Iowa 1880) (declining to extend liability for court-house maintenance, "unwilling as we are to extend the liability of these *quasi* corporations further than already obtains, which, if done, must inevitably lead to inextricable complications arising in actions for all possible negligent acts"); *see also, e.g.*, *Soper v. Henry Cnty.*, 26 Iowa 264, 270 (1868) (declining to extend liability for "small bridges"); *Greene v. Harrison Cnty.*, 16 N.W. 136, 136 (Iowa 1883) (declining to extend liability for drainage ditch maintenance, explaining *Wilson* was "[a]gainst the decided weight of authority"); *Lindley v. Polk Cnty.*, 50 N.W. 975, 975 (Iowa 1892) (declining to extend liability for jail maintenance, explaining "[w]e are still of the opinion that there is no consideration of right or public policy which would authorize this court to open the way to all manner of actions against counties based upon the negligence of its officers"); *Packard v. Voltz*, 62 N.W. 757, 758 (Iowa 1895) (declining to extend liability to highway maintenance, explaining "[b]ut for the rule announced in [*Wilson*] and the cases adhering to it, the one now contended for would have no authoritative support in this state. The rule of that case has been doubted, and the doubt, on common–law authority, has recognition in the holding of this court"); *Snethen v. Harrison Cnty.*, 152 N.W. 12, 13 (Iowa 1915) (declining to extend liability to highway maintenance even though "the analogy is quite close," because "this court, in adopting the rule of liability for defective

bridges, did not follow the general rule then existing in other jurisdictions, and has since its adoption persistently and consistently refused to enlarge the same").

Rather than extend erroneous precedent, the Court waited until a case provided the appropriate opportunity to revisit the holding. And in *Post v. Davis County*, the Court was presented with such an opportunity—the legislature amended a statute relating to county control of bridges. 191 N.W. 129, 130 (Iowa 1922). Surveying both the change in factual circumstances and the considerable flaws of the *Wilson* decision, the Court overruled *Wilson*, "formally "return[ing] to the fundamental principle of nonliability of the county in the absence of legislation creating liability." *Id.* at 135. Significantly, the Court explained it was "unable to follow [*Wilson*] to its logical consequences without overturning principles which have been universally recognized as fundamental." *Id.*

So there is precedent for this Court, facing erroneous government-liability precedent, to say "[t]hus far and no farther." *Id.* at 133. If the Court finds this appeal inapt to revisit *Godfrey*, the Court should still "refuse[] to extend the operation of [its] rule beyond that class of cases which involve in all strictness" the limited claim recognized in *Godfrey*. *Wilson v. Wapello*, 105 N.W. 363, 366 (Iowa 1905). Because *Godfrey*, in all strictness, did not recognize a claim

arising under article I, section 8 of the Iowa Constitution, this Court should not do so here.

Or this Court could adopt the inquiry used by the United States Supreme Court in extending *Bivens* claims in new contexts. In *Egbert*, rather than dispose of *Bivens*, the Court announced it would not extend the claim when "there is any reason to think that Congress might be better equipped to create a damages remedy." 142 S. Ct. at 1803. "Put another way, the most important question is who should decide whether to provide for a damages remedy, Congress or the courts? If there is a rational reason to think that the answer is "Congress"—as it will be in most every case—no *Bivens* action may lie." *Id.* (cleaned up).

Here, there are rational reasons to think the Legislature is in a better position to assess the need for damages remedies against the State under article I, section 8, of the Iowa Constitution. The Legislature has indeed already engaged in cost-benefit analysis for State and municipal tort liability, waiving and retaining tort immunity based on the claim or circumstances—even calibrating it differently for the State and municipalities. *Compare* Iowa Code § 669.14(4) (retaining sovereign immunity of the State for many intentional torts, including false arrest), *with* Iowa Code § 670.4 (more broadly waiving immunity for municipalities without those same limitations); *see also* Iowa Code §§ 669.2(3)–(4), 669.14,

669.14A, 669.26. This analysis requires particular care balancing many policy factors in the context of unreasonable searches and seizures which could significantly affect the State's law enforcement efforts and strongly counsels in favor of leaving that decision in the hands of the Legislature. *Cf. Egbert*, 142 S. Ct. at 1804–05, 1807. Because there are many reasons to think the Legislature is better equipped to craft a damages remedy in this context, the U.S. Supreme Court's *Bivens* approach would counsel against implying a claim for damages here too.

Following any of these rationales, this Court should hold that a constitutional tort under article I, section 8, of the Iowa Constitution does not exist. And the district court's dismissal of Burnett's suit can be affirmed on that basis alone.

B. Even if a constitutional tort under article I, section 8, exists, the district court correctly held that Officer Smith exercised all due care in arresting Burnett for his failure to comply with the inspection.

Even if Burnett may bring a direct constitutional search-and-seizure claim under article I, section 8, "a governmental official whose conduct is being challenged will not be subject to damages liability if she or he pleads and proves as an affirmative defense that she or he exercised all due care to conform to the requirements of the law." *Baldwin*, 915 N.W.2d at 281. Here, the district court

correctly held that the State was entitled to all-due-care immunity. "The video of the incident does not show any action by Defendant Smith that could be construed as showing he acted in bad faith or with malice and lack of probable cause in conducting the investigation into the vehicle." App. 210.

While this Court hasn't had a chance to flesh out how all-due-care immunity operates in practice, other courts have considered the immunity and offered some guiding principles. "The defense is not based on 'all due care,' standing alone. Rather, the Iowa Supreme Court stated the defense in terms of proof that the defendant 'exercised all due care *to conform to [or with] the requirements of the law*.'" *Baldwin v. Estherville*, 333 F. Supp. 3d 817, 843 (N.D. Iowa 2018) (quoting *Baldwin*, 915 N.W.2d at 260, 281) (alterations and emphasis in original). To that end, "'objective reasonableness' of the defendant's conduct is relevant to qualified immunity for a violation of the Iowa Constitution, just as it is relevant to qualified immunity for a violation of the United States Constitution." *Id.* (quoting *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982)).

But unlike the federal scheme, all-due-care immunity does not cabin objective reasonableness to merely the existence clearly-established law. *Id.* Instead, all-due-care immunity considers factors like "objective good faith," the existence of "bad faith conduct," "malice and lack of probable cause," "lack of 'reasonable ground' for

the conduct in question," and the state of the law at the time of the conduct. *Id.* at 844–45; *cf. Children v. Burton*, 331 N.W.2d 673, 680 (Iowa 1983) (applying a "less demanding" standard for civil liability for arrests, explaining that "liability does not attach" when "the officer acts in good faith and with reasonable belief that a crime has been committed and the person arrested committed it").

Elsewhere, the United States Court of Appeals for the Eighth Circuit has described all-due-care immunity as a "two-step inquiry." *Saunders v. Thies*, 38 F.4th 701, 710 (8th Cir. 2022). "[F]irst, whether a state constitutional right has been violated and, second, whether the defendant exercised all due care to conform to the requirements of state law." *Id.* If the answer to either question is "no," then the defendant is qualifiedly immune from suit. *Id.*

Turning to this case—with the principles of probable cause, objective good faith, and reasonable grounds in mind—the district court correctly applied all-due-care immunity.

First, Burnett's arrest was supported by probable cause. *See* Appellant's Br. at 13 (confirming the case "arises" from Burnett's arrest). Probable cause exists where "the facts and the circumstances within [the officer's] knowledge, and of which [the officer] had reasonably trustworthy information, [are] sufficient in themselves to warrant a man of reasonable caution to the belief that an offense has been or is being committed." *Children,* 331 N.W.2d at

679 (quoting *Brinegar v. United States*, 338 U.S. 160, 175–76 (1948)). "Probable cause necessary to support warrantless arrest does not demand the same strictness of proof as guilt upon trial." *Id.* (quoting 6A C.J.S. *Arrest* § 23, at 56 (1976)). "The probabilities are not technical, but are factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act." *Id.* (quoting 6A C.J.S. *Arrest* § 24).

Officer Smith is authorized "to stop any motor vehicle or trailer on the highways for the purposes of weighing and *inspection*, to weigh *and inspect* the same and to enforce the provisions of the motor vehicle laws relating to the registration, size, weight and load of motor vehicles and trailers." Iowa Code § 321.476(1)(*a*) (emphasis added).

A person interferes with official acts "when the person knowingly resists or obstructs anyone known by the person to be a peace officer . . . in the performance of any act which is within the scope of the lawful duty or authority of that officer." Iowa Code § 719.1(1)(*a*). "Obstruct has been defined as 'to impose obstacles or impediments, to hinder, impede, or *in any manner* intrude or *prevent*.'" *State v. Hauan*, 361 N.W.2d 336, 339 (Iowa 1984) (quoting 58 Am. Jur. 2d. *Obstructing Justice* § 12 (1971)) (emphasis added). The primary inquiry is "whether the officer's actions were hindered." *State v. Wilson*, 968 N.W.2d 903, 918 (Iowa 2022) (quoting

Lawyer v. City of Council Bluffs, 361 F.3d 1099, 1107 (8th Cir. 2004)). The bar for interfering with official acts "is generally fairly low." *Wilson*, 968 N.W.2d at 918 (Iowa 2022).

To determine whether the brake lights worked, Officer Smith needed to observe truck's lights while brakes were pressed. But Officer Smith could not simultaneously depress the brake pedal *inside* the vehicle while also observing whether the brake lights became activated *outside* the vehicle. Thus, refusing to depress the brake pedal, so the inspecting officer can observe the brake lights, is conduct that obstructed Officer Smith's ability to complete his official duties to inspect the vehicle. Officer Smith therefore had probable cause to arrest Burnett for interfering with official acts. And because Officer Smith had probable cause to believe Burnett committed a crime, his arrest did not violate the Iowa Constitution and thus Officer Smith exercised all due care to comply with the law.

Burnett asserts that probable cause to arrest him under section 719.1 could not have existed because he merely passively refused to cooperate with an officer's orders. But his characterization of the events is not supported by the record, nor is it an accurate picture of the law. There are many examples of interference-with-official-acts convictions where a person refused to cooperate to such a degree, or in such a manner, that it constituted active interference. *See, e.g.*, *State v. Betts*, No. 14-0464, 2016 WL 3003344, at *4

(Iowa Ct. App. May 25, 2016) (finding arrestee's refusal "to put her daughter down to be handcuffed," refusal "to get in the squad car," and refusal to exit the squad car constituted "active interference"); *State v. Parsons*, No. 09-1438, 2010 WL 2757189, at *4 (Iowa Ct. App. July 14, 2010) (finding probable cause to arrest for interference with official acts when person refused orders to leave a scene, yelled in a manner that was distracting, and whose refusal to leave required other officers to be called in to assist the scene).

Like the woman in *Betts* who refused to enter the squad car so officers could complete her arrest, Burnett refused to depress the brake pedal so Officer Smith could complete his inspection. Like the distracting man who refused to leave the scene in *Parsons*, Burnett's refusals crossed from passive presence on the scene to active interference when he effectively vetoed a portion of his vehicle from being inspected, hindering Officer Smith's ability to complete the inspection. Because Burnett's conduct hindered, "or in any manner . . . prevent[ed]," Officer Smith's inspection, *Hauan*, 361 N.W.2d at 339, there was probable cause to arrest him for violating Iowa Code section 719.1. And Burnett's arrest was therefore consistent with art. I, section 8 of the Iowa Constitution and Officer Smith exercised all due care to comply with the law.

Second, Officer Smith acted with objective and factual good faith. Officer Smith did not arrest Burnett immediately after Burnett first refused to operate his lights, instead giving Burnett multiple opportunities to cooperate with the inspection and avoid arrest. Ex. E, at 11:08:00. Officer Smith clearly informed Burnett of the reason for his request—that he cannot simultaneously press the brake and view the lights—which ensured Burnett knew he was not being asked to do anything outside the scope of a lawful inspection. *Id.* at 11:08:35. Officer Smith also clearly explained the nature of the stop, which was to perform an inspection. *Id.* at 11:10:18.

Commercial haulers like Burnett know that Iowa law "subject[s] [them] to frequent inspections." *State v. A-1 Disposal*, 415 N.W.2d 595, 600 (Iowa 1987). Officer Smith did not stop Burnett's vehicle under false pretenses; clearly explained his intentions and what was necessary to complete the inspection; and gave Burnett multiple opportunities to complete the inspection and be on his way. Burnett, in turn, called Officer Smith "fucking crazy," Ex. E, at 11:10:15, and refused to allow his brake lights to be inspected. *Id.* at 11:12:53. So Officer Smith, unable to perform his official inspection, arrested Burnett for interference with official acts.

What's more, Officer Smith's training and experience included a prior incident in Cedar County where an interference with

official acts charge was sustained by the court when a driver refused to activate vehicle systems subject to inspection. *See* App. 25–26. Officer Smith at all times acted in accordance with his legal obligations to inspect vehicles and gave Burnett multiple opportunities to comply and avoid arrest. Officer Smith acted with objective and factual good faith during the entire encounter, which entitles him, and vicariously the State, to all-due-care immunity.

Third, Officer Smith had reasonable grounds to believe Burnett's refusals constituted interference with official acts. Iowa's vehicle-inspection laws aim "to promote the safety of highway travel and to reduce the deterioration of the highways caused by heavy traffic." *A-1 Disposal*, 415 N.W.2d at 597. Officer Smith sought to perform a Commercial Vehicle Safety Alliance ("CVSA")[4] level 2 inspection, which includes inspecting brake systems, "lighting devices (head lamps, tail lamps, stop lamps, turn signals, and lamps/flags on projecting loads)," and "windshield wipers," among many other vehicle items. App. 40.

---

[4] The CVSA is a nonprofit association of local, state, and federal commercial motor vehicle safety representatives. *See generally* About CVSA, CVSA, https://www.cvsa.org/about-cvsa/. The United States Department of Transportation's Federal Motor Carrier Administration incorporates CVSA policies and standards. *See, e.g.*, 49 C.F.R. § 385.4. And Iowa's vehicle regulations must be "consistent with" federal regulations, including 49 C.F.R. part 385. Iowa Code § 321.449(1)(*a*).

Officer Smith had reasonable grounds to believe Burnett was hindering, or in any manner preventing, the lawful vehicle inspection by refusing to allow his vehicle's brake lights to be checked. Again, Officer Smith could not have simultaneously depressed the brake pedal and viewed the lights outside the vehicle—the driver pressing the brake is *part* of the vehicle's inspection. By refusing to depress the brake pedal—effectively vetoing the brake-light inspection—Burnett hindered Officer Smith's ability to conduct inspect the vehicle, frustrating the purpose of Iowa's vehicle and highway safety laws. *A-1 Disposal*, 415 N.W.2d at 597. Applying the "fairly low" bar for interference with official acts, Officer Smith had reasonable grounds to arrest Burnett for hindering the vehicle inspection. Thus, Officer Smith acted with all due care to comply with the law.

Burnett's arguments to the contrary are unavailing. First, Officer Smith did not make any "mistake of law" that would preclude immunity—he had probable cause to believe Burnett was hindering the vehicle inspection. And second, characterizing Burnett's conduct as anything less than "active interference" simply misstates the record. Burnett actively thwarted Officer Smith's investigation, all the while acknowledging his actions would cause him to go to jail. *See* Ex. E, at 11:10:27–11:10:42.

This situation is analogous to a similar federal case from Mississippi. *See Hill v. Goodwin*, No. 3:18-CV-00015, 2018 WL 1734913, at *5 (N.D. Miss. Apr. 9, 2018) (holding the driver was required to operate the truck as needed for the officer to complete the inspection). *Hill* involved a regulatory scheme for commercial vehicles not unlike that existing in Iowa, and the driver in that case was arrested for refusing inspection because he declined to operate the controls of the vehicle under inspection. The court held: "Hill was required to operate the truck as necessary for Goodwin to complete his inspection." *Id.*

Officer Smith, just like the officer in *Hill,* had a right to perform the inspection, but he was impeded by Burnett in carrying out the inspection when Burnett refused to operate controls which would allow Officer Smith to determine if the truck's lighting system was properly working. In *Hill*, the federal court held a driver's failure to operate the controls "constituted a crime, and so, no constitutional violation occurred when [the officer] arrested him." *Id.* But significantly as well, the federal court observed even if it could be concluded Hill had no obligation to operate the controls, the officer was entitled to qualified immunity since there was no case authority which would establish it was "objectively unreasonable" for the officer to believe Hill committed a crime by refusing to participate in the inspection. *Id.*

Similarly, Officer Smith had probable cause and could reasonably believe Burnett had committed interference with official acts. As in *Hill*, Burnett offers no authority to conclude it was "objectively unreasonable" for Officer Smith to conclude Burnett had interfered with official acts. Nor was there any prior established constitutional right blessing Burnett's actions. *Hill* shows the existing case law demonstrated *it was constitutional* for a peace officer to arrest a commercial vehicle operator who refused to produce for inspection the relevant operating systems of the truck.

In sum, Officer Smith conducted a lawful vehicle inspection. He clearly communicated his intent to check the brake lights, the necessity of Burnett depressing the brake pedal, and the impossibility of Officer Smith doing both at the same time. Officer Smith gave Burnett multiple opportunities to comply before arresting him. And Burnett's refusal to allow his brakes to be inspected hindered Officer Smith's investigation, which provided probable cause and reasonable grounds to arrest him for interference with official acts. Officer Smith at no point acted maliciously, pretextually, or in bad faith. Because he acted with all due care to comply with the law, the district court correctly granted the immunity and dismissed the claim.

C. The dismissal of the criminal case against Burnett isn't preclusive of any issue here because neither Officer Smith nor the State—as his employer—were in privity to parties in that case.

In arguing against the State's motion for summary judgment and in favor of his cross-motion, Burnett sought to give preclusive effect to the dismissal of his criminal case arising from his arrest by Officer Smith. But the district court properly rejected Burnett's reliance on the court's ruling in his criminal case. *See* App. 213. Even assuming that the court in his *criminal* case actually decided some issue relevant to Burnett's *civil* claim, it couldn't be used offensively against Officer Smith and the State—acting as his employer—here because they were not in privity with any party in that criminal case.[5]

---

[5] While Burnett has consistently asked to apply "*claim* preclusion," he intermingles *issue* preclusion analysis. Appellant's Br. at 31; *see also id.* at 30–33; App. 175–76, 221–23. But only *issue* preclusion could even theoretically apply here since "claim preclusion" is a doctrine to *prevent* the assertion of new *claims* against a party that should have been included with their claims in the previous litigation. *See Penn v. Iowa State Bd. of Regents*, 577 N.W.2d 393, 398 (Iowa 1998). Burnett couldn't have brought this civil claim in the criminal case. And he doesn't seek to prevent Officer Smith and the State from asserting any claim against him. He contends only that an "issue is final" because it was decided in the prior case. Appellant's Br. at 31. That's issue preclusion. *See Penn*, 577 N.W.2d at 398. But both doctrines identically require privity of parties—which is fatal here regardless of the terminology used. *See id.*

A law enforcement officer testifying in a criminal case is not a party in that case and isn't in privity with the county attorney prosecuting the case. *See Harris v. Jones*, 471 N.W.2d 818, 820 (Iowa 1991). This Court has thus held that a court's ruling in a criminal case that a search and seizure was illegal cannot be used preclusively in a later civil claim for damages against the officer. *See id.*; *see also id.* at 819 (describing the § 1983 claim and procedural history). This Court reasoned that an officer witness "had no control over the prosecution of the criminal case," since he couldn't examine witnesses, choose the prosecuting lawyer, or appeal a ruling. *Harris*, 471 N.W.2d at 820. And even as a witness, "[a]ll he could do was answer the questions posed to him." *Id.* So too here. Officer Smith wasn't a party or in privity with the prosecution. Any order from the criminal case can't be preclusive against him. *See id.*

Neither can it be preclusive against the State—as Officer Smith's employer and the proper defendant in this case arising from his conduct under the Iowa Tort Claim Act. *See* Iowa Code §§ 669.2(3), 669.4(2). While the Johnson County Attorney prosecuted the criminal case against Burnett in the name of the State, the State's involvement there was in a different capacity and thus not in privity with the State as Officer Smith's employer here. *See Clark v. State*, 955 N.W.2d 459, 469–71 (Iowa 2021). In an analogous situation, this Court held that the State as a defendant in an

Iowa Tort Claims Act action as employer of a public defender "was not the same party, or in privity with a party" to post-conviction relief action in which the Johnson County Attorney participated in its prosecutorial role in the name of the State. *Clark*, 955 N.W.2d at 470.

The Court explained that the county attorney's office "was not expected to defend the PCR action by placing the risk to the public fisc from a malpractice suit" or "reputational interests at the forefront of its strategy." *Id.* at 470. Rather, as a part of its "its prosecutorial obligations to the citizens of Iowa," the county attorney sought to advance "[t]he State's ultimate responsibility . . . to see that justice is done, not to defend its conviction at all costs." *Id.* The same logic applies here. The Johnson County Attorney's interest on behalf of the State in Burnett's criminal case was to do justice; not to defend Officer Smith and his employer, the State, from possible future civil litigation. Nor would we want a prosecutor to worry about such things. As in *Clark*, these "incompatible obligations on the State" prevent issue preclusion from applying; and a contrary rule would be "unwise and impractical public policy." *Id.* Indeed, the U.S. Supreme Court has explained, "the purpose of a criminal court is not to provide a forum for the ascertainment of private rights. Rather it is to vindicate the public interest in the enforcement of the criminal law while at the same time safeguarding the

rights of the individual defendant." *Standefer v. United States*, 447 U.S. 10, 25 (1980) (cleaned up).

Even setting this problem aside, it's not clear that the court in the criminal case decided any specific issue relevant to Burnett's claim here. The court's ruling was a model of brevity, stating only: "Case is dismissed with costs assessed to the plaintiff." *See* App. 36. Thus, there is no ability to ultimately discern what precisely the court found or what it relied on. The ruling was a short, simple declaration consistent with the less formal and often more summary nature of magistrate court. But the point remains the ruling is not something upon which a preclusion theory can properly be based. The district court properly rejected Burnett's attempt to use the ruling preclusively here.

D. Burnett's claim is also barred by section 669.14(4) because it's the functional equivalent of false arrest.

This Court may affirm a district court ruling "on a proper ground urged but not relied upon by the trial court." *DeVoss v. State*, 648 N.W.2d 56, 62 (Iowa 2002). The Court is always free to "affirm on any basis appearing in the record and urged by the prevailing party." *Id.* Because the district court held that Officer Smith acted with all due care and wasn't liable for a violation of article I, section 8, it didn't reach the State's alternative argument that the

suit was barred by section 669.14(4) because the claim is the functional equivalent of false arrest. *See* App. 208–15; App. 64–67 (raising section 669.14(4) as a basis for dismissal). But Burnett's claim shouldn't have even gotten out of the gate because it is barred by section 669.14(4). The Court can affirm on this basis too.

It's hornbook law that the State of Iowa—for purposes of any suit in tort—begins from a position of sovereign immunity. *See, e.g., Wagner v. State,* 952 N.W.2d 848, 856 (Iowa 2020) ("In other words, the State's immunity remains in effect unless the ITCA [Iowa Tort Claims Act] permits the claim."); *Hook v. Trevino*, 839 N.W.2d 434, 439 (Iowa 2013) ("'Prior to the passage of the Iowa Tort Claims Act in 1965, the maxim that 'the King can do no wrong' prevailed in Iowa.'" (quoting Don R. Bennett, *Handling Tort Claims and Suits Against the State of Iowa: Part 1*, 17 Drake L. Rev. 189, 189 (1968)). Following the Act's passage, the State became amenable to suit, but "only in the manner and to the extent to which consent has been given by the legislature." *Hansen v. State*, 298 N.W.2d 263, 265 (Iowa 1980); *see also* Iowa Code § 669.4(3) (waiving sovereign immunity only "to the extent provided in" the Act). "The doctrine of sovereign immunity dictates that a tort claim against the state . . . must be brought, if at all, pursuant to chapter 669." *Dickerson v. Mertz*, 547 N.W.2d 208, 213 (Iowa 1996).

"Section 669.14(4), commonly referred to as the intentional tort exception, provides that the State's waiver of sovereign immunity from tort claims does not apply to '[a]ny claim arising out of assault, battery, false imprisonment, false arrest, malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit, or interference with contract rights.'" *Minor v. State*, 819 N.W.2d 383, 406 (Iowa 2012) (citing Iowa Code § 669.14(4)). The Iowa Supreme Court has repeatedly interpreted this prohibition as "identify[ing] excluded claims in terms of the type of wrong inflicted." *Greene v. Friend of Ct., Polk Cnty.*, 406 N.W.2d 433, 436 (Iowa 1987). Thus, "where the basis of the plaintiff's claim is the functional equivalent of a cause of action listed in section 669.14(4), the government official is immune." *Minor v. State*, 819 N.W.2d 383, 406 (Iowa 2012); *see also Smith v. Iowa State Univ. of Sci. & Tech.*, 851 N.W.2d 1, 20–21 (Iowa 2014); *Jones v. Univ. of Iowa*, 836 N.W.2d 127, 141–42 (Iowa 2013).

"It is the substance of the claim and not the language used in stating it which controls whether the claim is barred by" the ITCA. *Minor*, 819 N.W.2d at 406 (cleaned up). If the gravamen of a plaintiff's claim is one of the exempted torts, then the state and its employees are immune from suit, regardless of the plaintiff's chosen pleading language. *Hawkeye By-Products, Inc. v. State*, 419 N.W.2d 410, 411–12 (Iowa 1988).

Burnett brought his claim under the Iowa Tort Claims Act. Indeed, he continues to assert on appeal that Officer Smith "was always acting as an Iowa State Motor Vehicle Enforcement Officer, an employee of the State of Iowa." Appellant's Br. at 14; *see also* Iowa Code § 669.2(3)(*a*) (defining a claim under the Act); Iowa Code § 669.2(1) (defining scope of employment). It can thus only be brought if it's not barred by section 669.14(4).

But it is barred—and the State hasn't waived its sovereign immunity—because Burnett's unreasonable-seizure claim under article I, section 8, is the functional equivalent of "false arrest." Iowa Code § 669.14(4). The basis of his claim—and all his arguments on appeal—is that Officer Smith's arrest of Burnett for the crime of interference was official acts was unlawful because he lacked probable cause. *See* App. 5–6, at ¶¶ 4–17; App. 210, 212–13; Appellant's Br. at 18–44. This is the functional equivalent of false arrest, which likewise requires proving "(1) detention or restraint against one's will and (2) unlawfulness of the detention or restraint." *Children v. Burton*, 331 N.W.2d 673, 678–79 (Iowa 1983); *see also Greene*, 406 N.W.2d at 436 (holding that claim arising from improper jailing for failure to pay child support was functional equivalent of false arrest).

That Burnett purports to bring a constitutional claim doesn't alter this analysis. This Court has held that *federal* constitutional

claims are barred when they're the functional equivalent of the one of the listed torts. *See Greene*, 406 N.W.2d at 436 (holding that state hasn't waived sovereign immunity for Fourteenth Amendment due-process claim because it is the "functional equivalent of false arrest or false imprisonment"). It would be odd indeed if the statute could apply to bar a federal constitutional claim and not a state one.

And the Court has recently clarified that at least all the *procedural* requirements of chapter 669 apply to state constitutional torts. *See Wagner v. State*, 952 N.W.2d 843, 856–59 (Iowa 2020). The decision in *Wagner* continues the trend of post-*Godfrey* cases, which have never extended the case and consistently reined it in. *See Venckus v. City of Iowa City*, 930 N.W.2d 792 (Iowa 2019); *Baldwin v. City of Estherville*, 929 N.W.2d 691 (Iowa 2019); *Baldwin v. City of Estherville*, 915 N.W.2d 259 (Iowa 2018).[6]

[6] Nearly all the cases have been certified questions from federal courts, where the Iowa Supreme Court has been limited to answering the question certified. In the only direct appeals, the question of *Godfrey's* continued validity was either not presented or unnecessary to reach. *See Godfrey v. State*, 962 N.W.2d 84, 114 (Iowa 2021) (declining to reconsider *Godfrey* in the appeal from final judgment of the same case "because it is the law of the case"); *Venckus,* 930 N.W. 2d at 799 n.1. (assuming without deciding that plaintiff "asserted cognizable constitutional claims" because "[t]he parties have not asked [the Court] to reconsider" *Godfrey*); *Lennette v. State*, 975 N.W.2d 380, 392–397 (Iowa 2022) (rejecting constitutional claims on the merits rather than reaching the continued viability of *Godfrey*); *see also id*. at 402–03 (McDonald, J., concurring) (agreeing with the State that *Godfrey* should be overruled).

True, this trend—and *Greene*'s holding that section 669.14(4) applies to constitutional claims— may be in some tension with *Godfrey* itself. *See Wagner*, 952 N.W. 2d at 858 (noting *Godfrey's* implicit holding that the Tort Claims Act doesn't bar constitutional claims). But it's *Godfrey* that's the outlier. This Court should follow *Greene* and hold that section 669.14(4) applies to state constitutional torts and bars this claim.

CONCLUSION

For these reasons, the district court's decision granting summary judgment to the State—and denying Burnett's cross-motion—should be affirmed.

REQUEST FOR ORAL SUBMISSION

The State requests to be heard in oral argument.

Respectfully submitted,

THOMAS J. MILLER
Attorney General of Iowa

JEFFREY S. THOMPSON
Solicitor General

/s/ B.J. Terrones
B.J. TERRONES
Assistant Attorney General
1305 E. Walnut Street
Des Moines, Iowa 50319
(515) 281-5164

(515) 281-4209 (fax)
jeffrey.thompson@ag.iowa.gov
b.j.terrones@iowadot.us

ATTORNEYS FOR
APPELLEES

CERTIFICATE OF COST

No costs were incurred to print or duplicate paper copies of this brief because the brief is only being filed electronically.

/s/ Jeffrey S. Thompson
Solicitor General

CERTIFICATE OF COMPLIANCE

This brief complies with the typeface requirements and type-volume limitation of Iowa R. App. P. 6.903(1)(d) and 6.903(1)(g)(1) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Century Schoolbook font and contains 8,856 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

/s/ *Jeffrey S. Thompson*
Solicitor General

CERTIFICATE OF FILING AND SERVICE

I certify that on October 7, 2022, this brief was electronically filed with the Clerk of Court and served on all counsel of record to this appeal using EDMS.

/s/ *Jeffrey S. Thompson*
Solicitor General