IN THE SUPREME COURT OF IOWA
No. 22–0243

LARRY HEDLUND,

Appellee,

vs.

STATE OF IOWA; K. BRIAN LONDON, COMMISSIONER OF THE IOWA DEPARTMENT OF PUBLIC SAFETY, Individually; CHARIS M. PAULSON, DIRECTOR OF CRIMINAL INVESTIGATION, Individually; and GERARD F. MEYERS, ASSISTANT DIRECTOR, DIVISION OF CRIMINAL INVESTIGATION, Individually,

Appellants.

Appeal from the Iowa District Court for Polk County
Paul D. Scott, District Judge

APPELLANTS' FINAL BRIEF

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ISSUE PRESENTED

Whether the district court erred in applying the 2019 amendments to Iowa Code section 70A.28 retroactively to Hedlund's whistleblower claim despite the amendments being enacted while his claim was on appeal, despite no legislative intent to apply the amendments retroactively, and despite this Court's prior ruling that Hedlund is not entitled to non-equitable relief.

Authorities

Landgraf v. USI Film Products, 511 U.S. 244 (1994)

Dindinger v. Allsteel, 860 N.W.2d 557 (Iowa 2015)

Hedlund v. State, 930 N.W.2d 707 (Iowa 2019)

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Iowa Comprehensive Petroleum Underground Storage Tank Fund Bd. v. Shell Oil Co., 606 N.W.2d 370 (Iowa 2000)

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2019 Iowa Acts ch. 109, § 1

ROUTING STATEMENT

Appellants recommend retention. The district court's conclusion—that the 2019 amendments to Iowa Code chapter 70A apply retrospectively and authorize Appellee Larry Hedlund to seek civil damages at a jury trial—conflicts with *Dindinger v. Allsteel, Inc.*, which rejected a litigant's contention that an amended statute is "merely remedial" (and therefore retrospective) just "because it provides an enhanced remedy . . . for a preexisting cause of action" among other provisions. 860 N.W.2d 557, 564 (Iowa 2015). Additionally, the Court often retains subsequent appeals when it has issued an opinion in the same case before. *See, e.g.*, *Godfrey v. State*, 962 N.W.2d 84, 96 (Iowa 2021); *Hedlund v. State [Hedlund II]*, 930 N.W.2d 707, 715 (Iowa 2019); *Lee v. State*, 906 N.W.2d 186, 191–93 (Iowa 2018). Retention is therefore appropriate. *See* Iowa R. App. P. 6.1101(2)(*b*), (*d*), (*f*).

STATEMENT OF THE CASE

In 2019, this Court held Larry Hedlund could not obtain non-equitable relief or a jury trial for his whistleblower claim under Iowa Code section 70A.28. *Hedlund II*, 930 N.W.2d at 718. The Court remanded the case for a nonjury trial for equitable relief only. *Id.* at 726. In the decision, the Court acknowledged, but did not substantively address, the 2019 amendments to section 70A.28, which were enacted while the case was pending before the Court. *Id.* at 716 n.5; *see also* 2019 Iowa Acts ch. 109, § 1.

On remand, the parties agreed to a 10-day, nonjury trial in May 2020 and began preparing for trial. But then Hedlund decided that, this Court's decision notwithstanding, he still wanted non-equitable relief and a jury trial. So, he amended his petition to add a *Godfrey*-type free-speech claim. But that didn't work—Hedlund never spoke as a private person. So, he moved for the district court to apply the 2019 amendments to section 70A.28 retroactively and let him seek "civil damages in an amount not to exceed three times the annual wages and benefits received by the aggrieved employee prior to the violation." Iowa Code § 70A.28(5)(*a*) (2021).

The district court granted the motion to apply the section 70A.28 amendments retroactively. (App. at 52). In support of its decision, the district court relied on a Des Moines Register article from six years before the amendment, and the statements of two individual legislators discussing a preexisting situation in Waukee. (App. at 51–52).

Defendants sought interlocutory appeal, which was granted. The Court must now again decide whether Larry Hedlund is entitled to non-equitable relief and a jury trial for his whistleblower claim under section 70A.28.

FACTUAL BACKGROUND AND PROCEEDINGS

The Court has seen this case before. *Hedlund II*, 930 N.W.2d at 707; *Hedlund v. State [Hedlund I]*, 875 N.W.2d 720 (Iowa 2016). Larry Hedlund retired from the Department of Public Safety (DPS) in lieu of termination after a 500-page Professional Standards Bureau investigation concluded he engaged in multiple acts of insubordination. *Hedlund II*, 930 N.W.2d at 714. Hedlund disputed the insubordination and instead believed his termination was motivated by him disclosing that he observed a vehicle transporting then-Governor Branstad speeding. *Id.* at 715. So Hedlund sued the State, the Commissioner of DPS, the Director of Criminal Investigation, the Assistant Director of Criminal Investigation, and Governor Branstad. He raised multiple claims, including a whistleblower claim under Iowa Code section 70A.28(5).

After years of litigation, the district court granted summary judgment for Defendants on all claims. *Id.* at 715 Hedlund appealed, and this Court affirmed summary judgment on all but one claim: the section 70A.28(5) whistleblower claim. *Id.*

One issue before the Court at that time was whether Hedlund was entitled to compensatory damages and a jury trial for his whistleblower claim. *Id.* at 718. The Court interpreted the statute and concluded "the affirmative relief under section 70A.28(5)(*a*) is equitable relief." *Id.* Thus Hedlund was limited to equitable relief and not entitled to a jury trial. *Id.*

While the Court was deliberating Hedlund's appeal, the legislature amended the entire whistleblower statute, making substantive changes to multiple subsections. *See* 2019 Iowa Acts ch. 109, § 1. In its opinion, the Court noted the statute was amended but did not address the applicability of the amendment to this suit. *Hedlund II*, 930 N.W.2d 716 n.5. The Court instead remanded the case for a nonjury trial on Hedlund's whistleblower claim.

The 70A.28 amendments took effect July 1, 2019. Procedendo on Hedlund's appeal was issued August 5, 2019. The parties then held a trial scheduling conference and mutually agreed to a 10-day, nonjury trial beginning in May 2020. (Plaintiff's Motion for Hearing on Trial Setting Conference, App. at 13 ("The parties agree that a 10-day nonjury trial is appropriate.")). But three months before the

nonjury trial was set to begin, Hedlund decided he still wanted to pursue his disallowed damages at a jury trial. So more than six years after filing suit, he amended his petition to add a *Godfrey*-type free-speech claim under the Iowa Constitution. (App. at 33–34). The trial was subsequently continued due to the COVID-19 pandemic and rescheduled for August 2021.

The district court ultimately dismissed the *Godfrey*-type claim—first for lack of jurisdiction and then again for failing to state a claim upon which relief can be granted.[1] Meanwhile, realizing his *Godfrey*-type claim (and thus his disallowed damages) may be in jeopardy, Hedlund filed a motion asking the district court to declare that the section 70A.28 amendments applied to his claim and entitled him to heightened damages. (App. at 39). The district court granted Hedlund's motion to apply the section 70A.28 amendments retroactively. (App. at 52).

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[1] Hedlund did not appeal the dismissal, so the only issue on appeal is whether the amendments to Iowa Code section 70A.28 are retroactive.

The district court found that some of the amendments were remedial in nature, and thus proceeded to the three-part test to determine whether the amendments should apply retroactively. (App. at 48–50). Applying the test, the court concluded the "legislature was aware there were whistleblower claims pending against various state agencies at the time of passage of the amendment." (App. at 51). In reaching this conclusion, the court looked to a 2013 Des Moines Register article in which two state legislators commented on Hedlund's recently filed lawsuit, and used the article as evidence that the legislature was aware of Hedlund's pending lawsuit. (App. at 51). And the court also considered two statements by individual state legislators: a floor speech by Senator Guth mentioning the Waukee embezzlement accusation[2] and a Des Moines Register article by Senator Schneider again discussing the Waukee accusation. (App. at 51–52).

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[2] Available at https://www.legis.iowa.gov/dashboard?view=video&chamber=S&clip=s20190326084831569&dt=2019-03-26&offset=12262&bill=SF%20502&status=i.

The court concluded "[t]hese comments indicate legislative awareness of actions already deemed to be illegal retaliation against whistleblowers." (App. at 52). Because there was "evidence to indicate the legislature intended the amendments to 70A.28(5)(a) to be applied retroactively," it granted Hedlund's motion. (App. at 52). This appeal follows.

ARGUMENT

This Court should find that Hedlund's whistleblower claim is equitable and that he has no right to non-equitable relief or a jury trial on that claim for three independent reasons: (1) the 2019 amendments to the whistleblower statute are substantive and therefore should not be applied retroactively; (2) after the Iowa Supreme Court's 2019 ruling, it is law of the case; and (3) Hedlund waived any such argument through his prior representations to the State and this Court.

These arguments were presented to the district court, thus preserving error. And this appeal involves no disputed facts, and instead turns on the proper interpretation of Iowa Code section 70A.28 (2021). Questions of statutory interpretation are reviewed

for correction of errors at law. *Mlady v. Dougan*, 967 N.W.2d 328, 332 (Iowa 2021).

I. The whistleblower statute amendments do not apply retroactively.

Hedlund argues that the 2019 Amendments to 70A.28 are retroactive and therefore he is entitled to heightened damages on his whistleblower claim. But there is no legislative intent expressed by our legislature that these amendments apply retroactively. Additionally, precedent establishes the changes to chapter 70A were substantive—thus requiring that the amendments be applied prospectively only. And even if the changes to the statute were remedial, the amended statute fails the longstanding three-part test for determining whether those changes should be applied retroactively.

A. As in *Landgraf*, the amendments attach new legal burdens and thus should not apply retroactively without clear legislative intent.

"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." *Landgraf v. USI Film Products,* 511 U.S. 244, 265 (1994). Thus, "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.'" *Id.* (quoting *Kaiser Aluminum & Chem. Corp. v. Bonjorno,* 494 U.S. 827, 855 (1990)).

Landgraf is highly instructive. Before 1991, "Title VII afforded only 'equitable' remedies. The primary form of monetary relief was backpay." *Id.* at 252. But in 1991, Congress made several amendments across Title VII, including authorizing compensatory damages and a jury trial. *Id.* In *Landgraf*, the United States Supreme Court considered "whether [the damages and jury trial provisions] apply to a Title VII case that was pending on appeal

when the statute was enacted." *Id.* at 247. The Court held "that they do not." *Id.*

First, the Court could not identify any Congressional intent for the statute to apply retroactively. *Id.* at 255–57. Second, policy considerations strongly favored prospective application. "Applying the entire Act to cases arising from preenactment conduct would have important consequences, including the possibility that trials completed before its enactment would need to be retried and the possibility that employers would be liable for punitive damages for conduct antedating the Act's enactment." *Id.* at 258–59. Third, the Court found no textual basis to conclude the damages and jury trial provisions applied retroactively. *Id.* at 259–60.

Fourth, the Court explained a statute has retroactive effect when it "increase[s] a party's liability for past conduct."[3] *Id.* at 280.

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[3] *See also Hrbek v. State*, 958 N.W.2d 779, 782 (Iowa 2021) (explaining not every application of a new statute is retroactive application, and instead the court must inquire whether "a statute applies a new rule, standard *or consequence* to a *prior* act or omission") (first emphasis added). The *Hrbek* decision favorably cites *Landgraf*. *See id.* at 782.

"Unlike certain other forms of relief, compensatory damages are quintessentially backward looking. Compensatory damages may be intended less to sanction wrongdoers than to make victims whole, but they do so by a mechanism that affects the liabilities of defendants." *Id.* at 282. Introducing compensatory damages is "the type of legal change that would have an impact on private parties' planning." *Id.* Because the compensatory damages amendment "would attach an important new legal burden to" previously disallowed conduct, "it is the type of provision that does not apply to events antedating its enactment in the absence of clear legislative intent." *Id.* at 283.

The Court concluded by emphasizing that merely vindicating a statute's purpose is "not sufficient to rebut the presumption against retroactivity." *Id.* at 286. The legislative process is full of compromise, and "[a] legislator who supported a prospective statute might reasonably oppose retroactive application of the same statute." *Id.* Expanding the scope of damages "is plainly not the sort of provision that *must* be understood to operate retroactively because a contrary reading would render it ineffective." *Id.* Because

fundamental principles of fairness prevent retroactive application, the Title VII amendments did not apply to the plaintiff whose claims were on appeal when the amendments were enacted.

So too in Iowa. "There is a general presumption that newly enacted statutes apply only prospectively." *Dindinger*, 860 N.W.2d at 563. "Legislative intent determines if a court will apply a statute retrospectively or prospectively." *Iowa Beta Chapter of Phi Delta Theta Fraternity v. State*, 763 N.W.2d 250, 266 (Iowa 2009). "Requiring clear intent assures that [the legislature] has affirmatively considered the potential unfairness of retroactive application and determined that it is an acceptable price to pay for the countervailing benefits." *State v. Macke*, 933 N.W.2d 226, 235 (Iowa 2019) (quoting *Landgraf*, 511 U.S. at 272–73).

In analyzing analogous amendments to employment statutes both the United States Supreme Court (in *Landgraf*, regarding Title VII) and the Iowa Supreme Court (in *Dindinger*, regarding Iowa Code chapter 216) utilize the identical presumption against retroactive application of statutes. The amendments to Iowa Code section 70A.28 at issue here are from the same cloth. Because there

is no express legislative intent to apply the 2019 amendments to section 70A.28 that is the end of the inquiry. *Macke* 933 N.W.2d at 233; *see also id.* at 239 (McDonald, J., dissenting) (asserting if there is no express legislative intent making the statute retrospective, "[e]nd of inquiry").

B. No legislative intent supports retroactive application and the district court erred in relying on stray legislator statements to imply legislative intent.

In the absence of express legislative intent, the district court searched for implied intent. But the court's search failed to identify an "unavoidable implication" that the amendments were intended to apply retroactively. *Baldwin v. City of Waterloo*, 372 N.W.2d 486, 491 (Iowa 1985).

In several cases in which the Iowa Supreme Court found statutes to apply retroactively by unavoidable implication, the statutes contained language indicating they were intended to address past or existing problems. *See, e.g.*, *Iowa Comprehensive Petroleum Underground Storage Tank Fund Bd. v. Shell Oil Co.*, 606 N.W.2d 370, 375 (Iowa 2000) (finding Petroleum Fund statute was retroactive in part because it contained explicit language that

it was intended to clean up existing leaks and improve existing tanks); *City of Waterloo v. Bainbridge*, 749 N.W.2d 245, 251 (Iowa 2008) (applying statute retroactively because language in the statute showed that it applied to abandoned properties at the time it went into effect); *State ex rel. Turner v. Limbrecht*, 246 N.W.2d 330, 333–34 (Iowa 1976) (finding newly enacted Consumer Fraud Act applied retroactively because the preamble showed that it was intended to address existing consumer frauds).

By contrast, the 2019 amendments to chapter 70A contain no similar language that would show legislative intent for it to apply retroactively to existing whistleblower actions. Therefore, the presumption that statutes apply prospectively only should control. *Dindinger*, 860 N.W.2d at 563.

The district court erred by looking outside the language of the amendment and settled canons of interpretation and instead relying on the statements of three individual senators to determine the legislature intended for the "civil damages" language to apply retroactively. A newspaper article published *six years before the statute's amendment*, with no discussion of the particular

amendment's language, is plainly not evidence the legislature intended the amendment to operate retroactively. (App. at 51). Rather, it is merely hearsay evidence that two legislators were at one point aware of the unproven allegations in Hedlund's Petition, which was the subject of significant media coverage.

The article sheds no light on whether those two legislators—let alone a majority of the legislature—felt compelled to provide Larry Hedlund with a jury trial. *See Poller v. Okoboji Classic Cars, LLC*, 960 N.W.2d 496, 512 (Iowa 2021) (noting individual legislator statements are "inadmissible on the question of legislative intent"); *see also State v. Davison*, 973 N.W.2d 276, 294 (Iowa 2022) (McDermott, J., concurring specially) ("[P]eople have no way of knowing that they might . . . be bound by explanatory passages that a sponsoring legislator includes when the bill is introduced in the legislature, or bound by some individual legislator's statements uttered in the course of debate on a bill."). Reliance on this article was plainly inappropriate and warrants reversal.

Nor is the lone comment by a single legislator stating the amendment was first initiated "because of the recent activities over

at the Waukee School District" evidence that the majority of the legislature (1) voted for the bill because of Waukee specifically, or (2) intended the bill to not only protect against future similar instances to the Waukee situation, but also govern pending conduct. And the legislator certainly did not say the bill was initiated because of Larry Hedlund. Because individual comments by individual legislators are highly subjective, courts have routinely declined to find such comments probative of legislative intent.

"At first blush it might seem reasonable to rely on an individual legislator's opinion of legislative intent. But . . . such testimony is generally unpersuasive." *Iowa State Ed. Assoc. v. Public Emp. Relations Bd.*, 269 N.W.2d 446, 448 (Iowa 1978). Indeed, "[t]he legislative process is a complex one. A statute is often, perhaps generally, a consensus expression of conflicting private views. Those views are often subjective. A legislator can testify with authority only as to his own understanding of the words in question. What impelled another legislator to vote for the wording is apt to be unfathomable." *Id.* Thus, the Court is "usually unwilling to rely

upon the interpretations of individual legislators for statutory meaning." *Id.*

The Court has consistently declined to consider the beliefs of individual legislators when interpreting statutes. *See, e.g.*, *Rhoades v. State*, 880 N.W.2d 431, 447 (Iowa 2016) ("We have consistently held . . . that affidavits from legislators or former legislators are inadmissible on the subject of legislative intent."); *Donnelly v. Bd. of Trustees*, 403 N.W.2d 768, 771–72 (Iowa 1987) ("As we have stated in previous cases, we will not consider a legislator's own interpretation of the language or purpose of a statute, even if that legislator was instrumental in drafting and enacting the statute in question."); *AFSCME Iowa Council 61 v. State*, 928 N.W.2d 21, 36 (Iowa 2019) (cautioning against the "impossible task" of "ascertaining the subjective intent of a group of legislators," and explaining "Iowa legislators individually and collectively can have mixed or multiple motives" when enacting statutes (first quoting *S.C. Educ. Ass'n v. Campbell*, 883 F.2d 1251, 1261 (4th Cir. 1989)). Accordingly, the district court erred in considering immaterial, extrajudicial statements to discern legislative intent.

C. The amendments are substantive.

The district court further erred by concluding the amendments were not substantive. "Substantive law creates, defines and regulates rights. Procedural law, on the other hand, is the practice, method, procedure, or legal machinery by which the substantive law is enforced or made effective. Finally, a remedial statute is one that intends to afford a private remedy to a person injured by a wrongful act. It is generally designed to correct an existing law or redress an existing grievance." *Anderson Fin. Servs., LLC v. Miller*, 769 N.W.2d 575, 578 (Iowa 2009). Importantly, "[a] statute is not remedial merely because one might say, colloquially, that its purpose is to "remedy" a defect in the law. If a mere legislative purpose to remedy a perceived defect in the law made a statute remedial, very few statutes would not fall within this classification." *Dindinger*, 860 N.W.2d at 563 (cleaned up).

The district court improperly focused on only one of the many amendments to section 70A.28. It is true that the legislature added "civil damages" to sections 70A.28 and 70A.29, but the court failed to give proper consideration to the many other changes the

legislature made. The exception to the general rule of prospective applicability applies when "the statute relates *solely* to remedy or procedure." *Limbrecht*, 246 N.W.2d at 332 (emphasis added); *see also Dindinger*, 860 N.W.2d at 563. However, even within the amended code section that contains additional available damages (section 70A.28(5)), the legislature also created a new type of claim under Iowa's whistleblower statutes—*and* substantively limited that new claim. As the court in *Dindinger* stated, "when a statute creates new rights or obligations, it is substantive rather than procedural or remedial." 860 N.W. 2d at 563.

More significantly, these other amendments to sections 70A.28 and 70A.29 made new substantive changes to the statute. First, a new entity (a person providing human resource management to the state) is recognized such that a report to that person can give rise to a cause of action. Another amendment added a new element to a whistleblower claim by adding a "good faith" element. *See* 2019 Iowa Acts ch. 109, § 1; *see also* Iowa Code § 70A.28(2).

The fact that the elements of a cause of action have changed "and it is not open to dispute that there are some cases where the employee will be able to prevail now and would not have been able to prevail before," requires finding that the changes are substantive rather than remedial. *Dindinger*, 860 N.W.2d at 565. Because the amendments create liability for the State that did not exist before, the amendments are substantive and thus applied only prospectively. *Id.* The amendments to chapter 70A, considered as a whole, "altered the scope of what was and was not permissible conduct under Iowa law"—which makes them prospective. *Id.*

D. Even if the amendments are remedial, the three-part test counsels against retroactive application.

As discussed above, the amendments to 70A.28 are substantive, and thus should apply prospectively only. However, even if the amendments are remedial, "[a] remedial statute is not always applied retroactively." *Iowa Comprehensive Petroleum*, 606 N.W.2d at 375. Rather, there is a three-part test to determine whether the legislature intended a remedial provision to apply retroactively. *Id.* "First, we look to the language of the new legislation; second, we consider the evil to be remedied; and third,

we consider whether there was any previously existing statute governing or limiting the mischief which the new legislation was intended to remedy." *Id.* (quoting *Emmet County State Bank*, 439 N.W.2d 651, 654 (Iowa 1989)). When analyzing the 2019 amendments to chapter 70A under this three-part test, it is clear that the legislature intended the statute to apply prospectively only.

1. *No express language or unavoidable implication that the amendments were intended to apply retroactively.* As discussed above, the 2019 amendments to chapter 70A contain no express language or unavoidable implication showing that the amendments were intended to apply retroactively. It is instructive to contrast this with cases in which the Iowa Supreme Court found language to support legislative intent that the statutes should apply retroactively—*Bainbridge* and *Iowa Comprehensive Petroleum*.

In *Bainbridge*, the court considered a new statute that authorized obtaining title to abandoned property. 749 N.W.2d at 247–48. Applying the three-part test, the court found "the language of the statute requires the statute to be applied to all properties

that meet the definition of 'abandoned.'" *Id.* at 251. The legislature thus authorized cities "to obtain title to property that has been abandoned at any time," rather than those abandoned "after the date of the statute's enactment." *Id.* But here, the legislature contained no similar directive that the amendments to section 70A.28 apply to pending claims as well as future claims.

Similarly, in *Iowa Comprehensive Petroleum*, the court noted the legislation contained express findings that the act was necessary to clean up "*past and existing* petroleum leaks." 606 N.W.2d at 375 (quoting 1989 Iowa Acts ch. 131, § 1(3)). But the amendments to chapter 70A contain no such language that it was intended to remedy past and existing whistleblower violations. Thus, the amendments fail the first step of the retroactivity inquiry.

2. *The "evil to be remedied" is prospective*. The "evils to be remedied" by the amendments to chapter 70A are the same as those of any whistleblower protection act: to encourage employees with evidence of malfeasance to come forward, discourage employers from committing those acts in the first place, discourage employers from retaliating against employees for reporting, and generally

protecting the public from the types of bad acts covered by whistleblower protection acts. Because it is logically impossible to encourage or discourage activity that took place in the past, these purposes are inherently forward-looking.

In fact, the legislative history and Des Moines Register article cited by the district court supports this conclusion. The mere fact that the amendments were prompted by the failure of whistleblowers to come forward earlier in the Waukee embezzlement scandal does not support an inference that the legislature meant the amendments to apply retroactively. *See Dindinger*, 860 N.W.2d at 563 ("[I]f a mere legislative purpose to remedy a perceived defect in the law made a statute remedial, very few statutes would not fall within this classification." (quoting *Anderson Fin. Servs.*, 769 N.W.2d at 580 n. 4)). Furthermore, Sen. Schneider's article discusses the benefits of the law specifically in terms of "increasing the likelihood that well-intentioned people will come forward," and "encourage[ing] and support[ing]" whistleblowers. It is impossible to increase the likelihood of or

encourage an activity that took place before the statute was amended, as Hedlund's conduct did.

3. *A previously existing statute governed the conduct covered by the amendments to chapter 70A.* Finally, there was an extensive statutory scheme in place to protect whistleblowers before the 2019 amendments to chapter 70A, which weighs toward only prospective application. *Cf. Limbrecht*, 246 N.W.2d at 333–34; *Iowa Comprehensive Petroleum*, 606 N.W.2d at 376; *Bainbridge*, 749 N.W.2d at 251. In each of these cases, part of the Court's reasoning for finding that the newly enacted statutes at issue applied retroactively was that there were no prior statutes governing the issues addressed by the respective statutes. *Id.* Such is not the case here. Not only did a comprehensive statutory scheme already exist, but Hedlund filed his petition based on the preexisting statute years before the 2019 amendments to chapter 70A took effect.

Hedlund's reliance on *Limbrecht* to support the argument that the amendments to 70A should be applied retroactively is especially misplaced. The Iowa Consumer Fraud Act was enacted

in 1965 to protect the public from deceptive and unfair business practices. *State ex rel. Miller v. Hydro Mag, Ltd*, 436 N.W.2d 617, 620 (Iowa 1989); *see also State ex rel. Turner v. Koscot Interplanetary, Inc.*, 191 N.W.2d 624, 629–30 (Iowa 1971). The Consumer Fraud Act was a new statutory scheme that gave the Attorney General broad statutory powers to investigate and prosecute violations of the CFA. *Hydro Mag. Ltd.*, 436 N.W.2d at 620.

In contrast, a comprehensive statutory scheme to protect whistleblowers existed before the 2019 amendments to chapter 70A, and Hedlund availed himself of the protections of the prior statute by filing the present action after his termination. Thus, each of the three factors for determining whether the legislature intended for the amendments to chapter 70A to apply retroactively or prospectively show that the legislature intended the amendments to apply prospectively only.

II. The law of the case forecloses a jury trial.

Retroactivity notwithstanding, Hedlund's efforts also fail because granting expanded damages contradicts the law of the

case. In 2019, this Court unanimously ruled that any relief to which Hedlund is entitled under 70A.28 was equitable, and that the statute also did not create a right to a trial by jury. *Hedlund II*, 930 N.W.2d at 718 ("[T]he affirmative relief under section 70A.28(5)(a) is equitable relief"); *see also id.* at 751 (Appel, J., concurring in part) ("I concur in the majority's conclusion that Hedlund is not entitled to a jury trial or emotional distress damages on his section 70A.28(5)(*a*) whistleblower claim"). This conclusion is law of the case from which this Court may not deviate.

> As the Iowa Supreme Court recently noted,
>
> > Under the law of the case doctrine, "the legal principles announced and the views expressed by a reviewing court in an opinion, right or wrong, are binding throughout further progress of the case upon the litigants, the trial court and this court in later appeals." *State v. Ragland*, 812 N.W.2d 654, 658 (Iowa 2012) (quoting *State v. Grosvenor*, 402 N.W.2d 402, 405 (Iowa 1987)). "It is a familiar legal principle that an appellate decision becomes the law of the case and is controlling on both the trial court and on any further appeals in the same case." *United Fire & Cas. Co. v. Iowa Dist. Ct.*, 612 N.W.2d 101, 103 (Iowa 2000).
>
> *Godfrey v. State*, 962 N.W.2d at 100.

A mandate to the district court in a decision of the appellate court becomes the law of the case on remand and a district court

that acts inconsistently with the mandate acts illegally. *Id.* Under the law-of-the-case doctrine, an appellate decision becomes the law of the case and is controlling on both the trial court and on any further appeals in the same case. *Bahl v. City of Asbury*, 725 N.W.2d 317, 321 (Iowa 2006). Issues decided by an appellate court cannot be reheard, reconsidered or relitigated. *Id.* The appellate court decision is final as to all questions decided and the trial court must follow that decision. *Id.*

Under the "law of the case" principle, a prior decision of a court of appeals must be followed without reexamination on remand to the district court. *Dickinson v. Auto Ctr. Mfg. Co.*, 733 F.2d 1092, 1097 (5th Cir. 1983); *State v. Grosvenor*, 402 N.W.2d 402, 405 (Iowa 1987) ("[L]egal principles announced and the view expressed by a reviewing court in an opinion, right or wrong, are binding throughout further progress of the case upon the litigants, the trail court and this court in later appeals."). A lower court on remand must implement both the letter and the spirit of the appellate court's mandate and may not disregard the explicit directives of that court. *Kapche v. City of San Antonio*, 304 F.3d 493,

496 (5th Cir. 2002). When it appears that a district court disregards the mandates of the appellate court decision just because it believed the appellate court erroneous, the decision should be reversed. *Id.*

The parties extensively briefed and litigated the issue of whether the relief available under 70A.28 was equitable or not, and the Iowa Supreme Court found that it was equitable. That ruling is the law of the case and must be followed.

III. Hedlund waived any argument that his whistleblower claim is not equitable.

This Court should find that Hedlund is not entitled to a jury trial or civil damages on his whistleblower claim and that the only remedies available for that claim are equitable for a third, independent reason: through his representations to the State and this Court, Hedlund waived any argument to the contrary. In an October 3, 2019, filing titled "Hedlund's Motion for Hearing on Trial Setting Conference," which was after both the Iowa Supreme Court decision establishing the law of the case on this issue and the effective date of the 2019 amendments to section 70A.28, Hedlund stated, "The parties agree that a 10-day non-jury trial is appropriate." (App. at 13). At that point, the only claim pending was

Hedlund's whistleblower claim, and the 2019 amendments to the statute were operative, yet Hedlund agreed with the State, and represented to this Court that a non-jury trial was appropriate for Hedlund's whistleblower claim.

Hedlund made these representations to the State and this Court after remand in an effort to obtain an earlier trial date on his whistleblower claim. Hedlund should be held to the representations he made to the State and this Court and not be allowed to change his position on the equitable nature of his whistleblower claims at his convenience. *See Wellmark v. Iowa Dist. Ct.*, 890 N.W.2d 636, 645 (Iowa 2017) (finding plaintiffs were bound by stipulations they made to the court about the nature of their claims). Having gotten what he wanted, an earlier trial date, by agreeing with the State and representing to the Court that the case was in equity, it would be unfair to the State to now allow Hedlund to backtrack on those representations and pursue his claims under the amended statute. *Id.* at n. 5 ("it would be unfair to allow plaintiffs to retract their stipulation after they got what they wanted from it").

Hedlund's argument in his recently filed motion, contradicting his own prior position and representations to the State and the Court on this matter, is therefore waived.

CONCLUSION

Because the amendments to chapter 70A do not apply to Hedlund, the district court's decision must be reversed.

REQUEST FOR ORAL SUBMISSION

The State requests to be heard in oral argument.

Respectfully submitted,

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CERTIFICATE OF COST

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

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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 5,327 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

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CERTIFICATE OF FILING AND SERVICE

I certify that on November 22, 2022, this brief was electronically filed with the Clerk of Court and served on all counsel of record to this appeal using EDMS.

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