

IN THE SUPREME COURT OF IOWA

SUPREME COURT NO. 22-1530

**STATE OF IOWA,
Plaintiff-Appellant,
vs.
COLBY DAVIS LAUB,
Defendant-Appellee.**

**ON DISCRETIONARY REVIEW FROM THE
IOWA DISTRICT COURT FOR BOONE COUNTY,
THE HONORABLE STEPHEN A. OWEN**

**AMICUS CURIAE BRIEF of the IOWA ASSOCIATION FOR
JUSTICE
Supporting Defendant-Appellee**

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No party or party’s counsel authored this brief in whole or in part nor contributed money to fund the preparation or submission of this brief. No other person contributed money to fund the preparation or submission of this brief

IDENTITY AND INTEREST OF AMICUS CURIAE

The objectives of the Iowa Association for Justice (hereinafter “IAJ”) include supporting the Constitution of the United States and the Constitution of the State of Iowa and the limitations on government’s authority over all individuals including those who are being investigated, accused and ultimately charged with a crime. The association is committed to protecting individual rights including the following statement from the Iowa Lawyer’s Oath: “[We] will never reject, from consideration personal to [ourselves], the cause of the defenseless or oppressed.”

Presently comprising approximately 700 members, IAJ member attorneys collectively represent thousands of Iowans annually who are charged with crimes or otherwise come into contact with the criminal justice system. IAJ serves the legal profession and the public through its efforts to strengthen the criminal justice system’s fairness, and its work to reform inequities within this system.

The cornerstone of our system of justice is the Constitution for the State of Iowa, and the Constitution of the United States. Both protect the rights of the citizens of Iowa. The issues in this present appeal include issues of profound public importance. The State seeks to seriously implicate expected rights and protections of the motoring public. IAJ believes that this

amicus curiae brief will assist the court in resolving issues by providing additional information and perspective by providing further analysis regarding statutory construction from a federal perspective, provide further analysis relating to how statutory interpretation ties into an equal protection analysis, as well as an analysis of how other states have ruled regarding implied consent and search warrants for bodily specimens.

As will be set forth herein, the State has increasingly utilized Iowa Chapter 808 warrants by-passing Iowa's implied consent procedures. The practice of utilizing 808 warrants bypasses the legislature's effort to balance individual privacy against the need to investigate impaired driving; and by doing so creates an unequal application of the law. For reasons set forth herein IAJ urges this Court to affirm the district courts who have found the practice unlawful.

ARGUMENT

- I. The legislature intended Iowa Code Section 321J.10 to contain the exclusive instances for which law enforcement could seek a search warrant for withdrawal of a bodily specimen in Operating While Intoxicated (OWI) investigations.
 - A. A statutory construction analysis supports the conclusion that in OWI investigations, search warrants for bodily specimens may only be conducted in circumstances proscribed under 321J.10(1)

Iowa's implied consent procedure is a creature of statute. Because the implied consent right is a creature of statute, it is subject to the rules of statutory interpretation.

The Iowa legislature, in Iowa Chapter 321J, designed a statutory scheme (implied consent) Iowa Code Section 321J.6 which was designed to balance the interests of the State in removing intoxicated drivers from the highways with the invasion of a cherished privacy interest of the public. *State v. Palmer*, 554 N.W.2d 859, 863 (Iowa 1996). The premise of the implied consent statute is that a driver "impliedly agrees to submit to a test in return for the privilege of using the public highways." *State v. Hitchens*, 294 N.W.2d 686, 687(Iowa 1980).

This legislative balance creates strong encouragement for individuals to provide a bodily specimen for chemical testing while also protecting an individual's right to refuse this personal invasion. On the encouragement side, the legislature established a relatively low threshold for a law enforcement to request a bodily specimen for chemical testing while imposing significant penalties for refusal being imposed. *See* Iowa Code §§ 321J.6(1) and 321J.9. In addition, the State may use test refusals as substantive evidence or consciousness of guilt against a Defendant; the power of such penalties is spelled out in *State v. Kilby*, 961 N.W.2d 374, 377 (Iowa 2021). "[T]he choice to submit or refuse to take a

blood-alcohol test will not be an easy or pleasant one for a suspect to make.” *Id.* quoting *South Dakota v. Neville*, 459 U.S. 553, 564 (1983).

On the other side of the statutory scheme are an individual’s rights to refuse such testing and preserve their privacy. As such, the legislature restricted law enforcement’s ability to obtain bodily specimens against an individual’s will. *See* Iowa Code § 321J.9(1) (“if a person refuses to submit to the chemical testing, a test shall not be given.”); *Hitchens* at 686.

The mechanism by which the bodily specimen is obtained, whether it is blood, urine, or breath, is not the issue, and neither is the reasonableness of such collection and how it intrudes on the body. The issue is that the individual is being compelled to submit to a retrieval of a bodily specimen (blood, urine, or breath) outside the parameters set forth in Iowa Code Section 321J.10(1) and the right to refuse is ignored or subsequently punished. The argument remains the same, whether the specimen is blood, urine or breath; there is no authority under the code. In Appellee Laub’s case, the fact that the specimen being requested is breath does not change the analysis, even if obtaining a breath specimen is less invasive than retrieving a blood specimen. Jurisdiction over search warrants is understood by the plain language of the statute. Chapter 808 contains no express authority to retrieve body samples, whether it is blood, urine, or breath. Iowa Code Section

321J.10 contains the explicit circumstances in which these specimens may be obtained by warrant.

Over the last few years, law enforcement has greatly expanded the use of Chapter 808 warrants to compel bodily specimens -- a practice which bypasses the carefully crafted balance created by the Iowa Implied Consent statutory scheme. The growing regularity of this practice was partially identified in the Appellant's briefing in *State v. Dewbre*, No. 21-1150, 2022 WL 10861226 (Iowa Ct. of App., Oct. 18, 2022).¹ Bypassing implied consent for anyone facing a Third Offense Operating While Intoxicated has become part of law enforcement's protocols.² The practice of increasingly using 808 warrants untethered from the Iowa Code Chapter 321J's more specific limitations offends this statutory scheme. Applying cannons of statutory construction makes this clear.

The Iowa Supreme Court has described principles of construction. "We apply statutes to resolve legal disputes by first considering the plain meaning of the statute under consideration." *State v. McIver*, 858 N.W.2d 699, 703 (Iowa 2015) (citing *State v. Albrecht*, 657 N.W.2d 474, 479 (Iowa 2003)). A statute is

¹ Cases identified there include: *State v. D.J.*, Story County OWCR060767; *State v. M.M.*, Boone County OWCR114999; *State v. K.M.*, Polk County OWOM090664; *State v. N.H.*, Polk County OWOM0916261; *State v. K.B.*, Boone County OWCR114659; *State v. B.S.*, Boone County OWCR114417; *State v. C.L.*, Boone County OWCR11500; *State v. ****, Boone County, OWCR114968; *State v. ****, OWCR114592; *State v. B.O.*, Warren County OWOM020721; *State v. ****, Warren County OWOM020867; *State v. ****, OWOM020883; *State v. J.N.*, Clay County OWCR020574; *State v. J.S.*, Palo Alto County, OWCR006547; *State v. N.S.*, Emmet County OWCR012395; *State v. ****, Emmet County OWCR012547; *State v. ****, Guthrie County, OWCR022292; *State v. ****, Ida County, OWCR008011.

² See *State v. D.J.*, Story County OWCR060767 (Exhibit I).

not ambiguous unless reasonable minds could disagree on the meaning of the particular word(s) or the meaning of the statute taken as a whole. *State v. Hutton*, 796 N.W.2d 898, 904 (Iowa 2011).

“The goal of statutory construction is to determine legislative intent. We determine legislative intent from the words chosen by the legislature, not what it should or might have said. Absent a statutory definition or an established meaning in the law, words in the statute are given their ordinary and common meaning by considering the context within which they are used. Under the guise of construction, an interpreting body may not extend, enlarge or otherwise change the meaning of a statute.” *State v. Bower*, 725 N.W.2d 435, 442 (Iowa 2006) (quoting *State v. Gonzalez*, 718 N.W.2d 304, 307-08 (Iowa 2006) (citations omitted)).

Iowa Code § 321J.10(1) sets forth the only specific circumstances when blood, breath or urine specimens may be compelled by warrant.

1. Refusal to consent to a test under section 321J.6 does not prohibit the withdrawal of a specimen for chemical testing pursuant to a search warrant issued in the investigation of a suspected violation of section 707.5 or 707.6A if all of the following grounds exist:
 - a. A traffic accident has resulted in a death or personal injury reasonably likely to cause death.
 - b. There are reasonable grounds to believe that one or more of the persons whose driving may have been the proximate

cause of the accident was violating section 321J.2 at the time of the accident.

There can be no other meaning gleaned from these specific limitations other than the legislature's intent to create limits on when a search warrant pursuant to Iowa Chapter 808 can be issued for blood, breath or urine during an investigation for operating while intoxicated. See *State v. Lutgen*, 606 N.W.2d 312, 314 (Iowa 2000) (General and specific statutes should be read together and harmonized, if possible; however, to the extent of an irreconcilable conflict between them, the specific or special statute ordinarily will prevail over the general one).

Multiple canons of statutory interpretation support this conclusion. Statutes dealing with the same subject are to be interpreted together, as though they are one law. *A. Scalia & B Garner, Reading Law: The Interpretation of Legal Texts*, 252 (2012). For example, Chapter 321J expresses a restriction on when a warrant can be obtained for a bodily specimen, whereas Chapter 808 contains no affirmative authority to override it. Under the canon of Negative-Implication the expression of one thing implies the exclusion of others. *Id.* at 107.

Yet another applicable canon is the "omitted-case canon." "Nothing is to be added to what the text states or reasonably implies; that is, a matter not covered is to be treated as not covered." *Id.* at 93. Here, the Court cannot add something to Chapter 808 particularly when such reading would require the court to ignore the specific restrictions of Chapter 321J.

In addition to these principles of statutory construction, the restrictive use of search warrants to the conditions set out in Iowa Code § 321J.10(1) is also consistent with the purposes of the statute. The restrictive purposes of the statute include “(1) to protect the health of the person submitting to the test; (2) to guarantee the accuracy of the test; and (3) to protect citizens from indiscriminate testing or harassment.” *Palmer*, 554 N.W.2d at 861 (citing *State v. Satern*, 516 N.W.2d 839, 841 (Iowa 1994); see also *State v. Schlemme*, 301 N.W.2d 721, 723 (Iowa 1981).

Other states have looked to the language of the implied consent statute to restrict law enforcement’s authority to obtain bodily specimens by search warrant. Those states have consistently held that where a statute restricts or limits the use of warrants, law enforcement may not utilize general warrants to obtain the specimens. One example is *State v. Collier*, 612 S.E.2d 281 (2005) (superseded by statute as stated in *McAllister v. State*, 325 GA. App. 583 (App.2014)). In *Collier*, the Georgia Supreme Court noted the implied consent statute “affords a suspect the opportunity to refuse to submit to a State-administered test of the suspect’s blood, urine, or other bodily substances.” *Id.* at 283. Like Iowa’s implied consent statute, the Georgia version, at that time, also contained language that where a refusal occurred, “a test shall not be given.” *Id.* See also Iowa Code § 321J.9(1).

The state of Georgia suggested the language only applied to warrantless testing.

The *Collier* court disagreed:

The right to refuse to submit to state-administered chemical testing has been created by the General Assembly. The General Assembly expressly contemplated the possibility of refusal and provided adverse consequences, other than the involuntary taking, by warrant or otherwise, of a specimen from the non-consenting suspect. At present the plain language of [the statute] restricts the ability of law enforcement to forcibly obtain that which has been refused.

Id. at 283 (citations omitted). *See also State v. McClead*, 566 S.E.2d 652 (W.Va. 2002) (no statutory authority existed for police officer to obtain a warrant to extract blood from a DUI arrestee); *State v. DiStefano*, 764 A.2d 1156 (R.I. 2000) (law enforcement officials may not obtain warrant to seize a nonconsenting motorist's blood for alcohol or drug testing) (superseded by statute); *Pena v. State*, 684 P.2d 864 (Alaska Sup. Ct. 1984) (implied consent statute provides the exclusive authority for the administration of police-initiated chemical tests precluding chemical sobriety tests performed pursuant to search warrant) (superseded by statute); *Commonwealth v. Bohigian*, 157 N.E.3d 59, 65 (2020) “In this Commonwealth [of Massachusetts] a requirement of consent [to a blood draw] is imposed by statute even when, because of probable cause and exigent circumstances, one is not imposed by the Federal Constitution”; *compare with Brown v. State*, 774 N.E.2d 1001 (Indiana Ct. App. 2002) (noting Indiana’s implied consent statute did *not* contain language that no test could be taken upon

refusal and citing *State v. Hitchens*, 294 N.W.2d 686, 687 (Iowa 1980) as a statute which *did* contain restrictions on law enforcement's testing upon refusal).

In sum, Iowa's implied consent statute provides that in return for the privilege of operating a motor vehicle within the state, a driver impliedly agrees to submit to chemical testing. *State v. Garcia*, 756 N.W.2d 216, 220 (Iowa 2008); see Iowa Code § 31J.6(1). A driver does, however, have the statutory right to withdraw this implied consent and refuse to provide a body specimen for chemical testing. *State v. Kilby*, 961 N.W.2d 374, 375 (Iowa 2021); *State v. Knous*, 313 N.W.2d 510, 512 (Iowa 1981). Permitting the use of a general search warrant under Chapter 808 eviscerates this statutory right and does not consider the competing interests at stake that were considered under the implied consent statute. A statutory construction analysis supports the conclusion that in OWI investigations, search warrants for bodily specimens may only be conducted in circumstances proscribed under 321J.10(1).

B. Failure to strictly construe Iowa Code Section 321J.10 creates inconsistent and arbitrary enforcement which, in turn, creates an environment ripe for equal protection violations.

The United States and Iowa Constitutions provide all persons shall be treated equally under the law. U.S. Const. amend. XIV, §1 (“No State shall...deny to any person within its jurisdiction the equal protection of the laws”); Iowa Const. art. 1 § 6. (“All laws of a general nature shall have a uniform operation; the

general assembly shall not grant to any citizen, or class of citizens, privileges or immunities, which, upon the same terms shall not equally belong to all citizens”).

Equal protection principles are most commonly applied in the context of laws which arbitrarily and unreasonably create dissimilar classifications of individuals when, looking to the purpose of those laws, such individuals are similarly situated. The Equal Protection Clause also forbids unequal enforcement of valid laws, where unequal enforcement is the product of improper motive. *Yick Wo v. Hopkins*, 118 U.S. 356 (1886). The practice of bypassing a defendant’s ability to refuse the forced production of a body specimen triggers both Equal Protection prongs.

It is important to discuss Iowa’s historic protections of individual’s rights to resist compulsory withdrawals of their bodily specimens. Iowa has long interpreted article I, section 9 of the Iowa Constitution as permitting a right to refuse forced production of body specimens. *See State v. Height*, 91 N.W. 935, 938-40 (Iowa 1902) (concluding an examination “of the private person of the defendant” was an “invasion of defendant’s constitutional right, impliedly guaranteed under the provision of our constitution as to due process of law, not to criminate himself”); *Wragg v. Griffin*, 170 N.W. 400, 403 (Iowa 1919) (“[Forcing the exposure of [the petitioner’s] body to visual examination and compelling the extraction of blood from his veins in search of evidence of a loathsome disease

which may or may not exist, is a deprivation of his liberty without due process of law, and he is entitled to be set free.”); *State v. Weltha*, 202 N.W. 148, 150 (Iowa 1940) (“We hold that the court was in error in receiving in evidence over timely objection by the defendant, the blood sample and the testimony of experts based thereon.”); *State v. Benson*, 300 N.W. 275, 277 (Iowa 1951) (“[Defendant] could not be compelled to testify....His refusal to testify is analogous to his refusal to submit to a blood test...If he cannot be compelled to submit to a blood test, it is because he cannot be compelled to give evidence.”).

This long held protection of individuals to refuse the forced collection of bodily specimens has found statutory support under chapter 321J. *See Kilby*, 961 N.W.2d at 375 (Iowa 2021) (“Defendants have a statutory right to refuse chemical testing....”); Iowa Code §§ 321J.9(1), 321J.10(4)(b).

The use of Chapter 808 search warrants in this context offends constitutional guarantees of equal protection through unequal enforcement. *See Snowden v. Hughes*, 321 U.S. 1, 8 (1944) (“the unlawful administration by [government] officers of a [law] fair on its face, resulting in it unequal application to those who are entitled to be treated alike, is....a denial of equal protection [if] there is shown to be present in it an element of intentional or purposeful discrimination.”) Here law enforcement’s tactics of utilizing Chapter 808 search warrants creates disparate treatment of test refusals.

In addition, Equal Protection principals mandate the statutory provisions and protections at issue be interpreted as applying to all individuals being investigated for operating while intoxicated. The Constitution requires that statutory provisions apply equally to all similarly situated individuals. Iowa Const., article I, section 6. *Racing Ass'n of Cent. Iowa. Fitzgerald*, 675 N.W.2d 1, 7 (Iowa 2004). Individuals in the criminal law context are “similarly situated” when the elements of the offenses are the same. *State v. Ceaser*, 585 N.W.2d 192, 196 (Iowa 1998) (overruled on other grounds by *State v. Bruegger*, 773 N.W.2d 862 (Iowa 2009); *See generally City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 439 (1985) (stating that the Equal Protection Clause “is essentially a direction that all persons similarly situated should be treated alike”); 21 Am.Jur.2d *Criminal Law* Section 594, at 982 (1981) (stating equal protection “requires that in the administration of criminal justice no person be subjected to a greater or different punishment for an offense than that to which others of the same class are subjected”).

There are instances in Iowa where individuals who have refused to comply with a search warrant for a bodily specimen have been subsequently prosecuted for contempt of court and punished with jail time for refusing the search warrant. County attorneys are bringing actions for contempt under Iowa Code Section

665.2(3).³ See *Birchfield*, 579 U.S. at 477 (2016) (holding “motorists may not be criminally punished for refusing a blood test based on legally implied consent.) This procedure also does not comport with the statutory construction of Iowa Code Section 321J.10(5), which only authorizes contempt under specific instances allowed for a warrant set forth in Section 321J.10(1).

The prohibitions, processes, and protections of Chapter 321J must be interpreted as applying equally to all motorists suspected of operating while intoxicated. When law enforcement chooses to whom the implied consent processes and protections apply and to whom it does not, the law ceases to uniformly apply to all similarly situated individuals. This is true even if a given officer makes the election based on some standard the officer creates on his own, such as by-passing implied consent and obtaining warrants only on persons who exercise their right to refuse field sobriety tests and preliminary breath tests; or on persons suspected of OWI 2nd or 3rd offenses who presumably “know the drill.”

The Iowa legislature sought to clearly delineate equal protection of the laws by limiting where a Chapter 808 warrant could be used and where it could not. See Iowa Code §§ 321J.10 and 321J.10A. Ignoring the strict interpretation of the relevant statutory restrictions promotes law enforcement’s unilateral enforcement based on little more than a whim. This practice is currently being employed

³ See *State v. C.J.*, Polk County No. OWOM091687 *Petition for Cert. denied* (Supreme Ct. App. No. 22-0817; *State v. N.C.*, Polk County No. OWOM09298

throughout the state of Iowa but varies based upon little more than geography or individual officer choice. Law enforcement has, in some cases, used a Chapter 808 search warrant for little more reason than an individual refusing standard field sobriety testing.

Further, individuals who are suspected of OWI have the due process and equal protection rights to have the substantive provisions of Iowa Code Section 321J applied over the procedural provisions of Chapter 808. To read the two chapters together and to interpret them to allow law enforcement to have the discretion to choose which mechanism law enforcement wishes to extract and seize a bodily specimen from a person deprives that individual of their statutory right of refusal under Iowa Code Section 321J.9.

CONCLUSION

For all the reasons set forth herein, the Iowa Association for Justice respectfully requests this Court affirm the District Court's decision granting the motion to suppress evidence.

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CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Iowa R. App. P.

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[X] this brief has been prepared in a proportionally spaced typeface using Times New Roman in 14-point font and contains 3604 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

March 7, 2023
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