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IN THE SUPREME COURT OF IOWA

SUPREME COURT NO. 23-1448
DUBUQUE COUNTY NO. 01311 OWCR148265

STATE OF IOWA,
PLAINTIFF/APPELLANT,

v.

JEFFREY JOHN FLYNN,
DEFENDANT/APPELLEE.

APPEAL FROM THE IOWA DISTRICT COURT
IN AND FOR DUBUQUE COUNTY
THE HONORABLE ROBERT J. RICHTER, JUDGE

APPELLEE'S FINAL BRIEF

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STATEMENT OF THE ISSUE PRESENTED FOR REVIEW

I. The district court correctly determined that the chemical breath test results should be suppressed due to noncompliance with Iowa's mandatory implied consent statute.

CASES:

Schmerber v. California, 384 U.S. 757 (1966)

South Dakota v. Neville, 459 U.S. 553 (1983)

State v. Baraki, 981 N.W.2d 693 (Iowa 2022)

State v. Bernhard, 657 N.W.2d 469 (Iowa 2003)

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State v. Henneberry, 558 N.W.2d 708 (Iowa 1997)

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Voss v. Iowa Dep't of Transp., 621 N.W.2d 208 (Iowa 2001)

STATUTES:

Iowa Code § 321J.6

Iowa Code § 321J.8

Iowa R. App. P. 6.1101

ROUTING STATEMENT

The State incorrectly asserts that, as a matter of settled law, a peace officer may request a specimen of blood, breath, or urine from an individual suspected of operating while under the influence in a manner that contravenes Iowa's implied consent statute. Contrary to the State's position, there is ample authority to support the proposition that the procedures outlined in the implied consent statute are mandatory. *See, e.g.*, *State v. Lindeman*, 555 N.W.2d 693, 695 (Iowa 1996) ("The legislature has . . . limited the circumstances under which such a [chemical] test may be demanded."); *State v. Rolling*, No. 04-0128, 2005 WL 723985, at *3 (Iowa Ct. App. Mar. 31, 2005) ("Iowa's implied consent statute, Iowa Code section 321J.6, *governs* an officer's authority to request a chemical test for purposes of determining alcohol concentration." (emphasis added)). In fact, the State acknowledged in its Application for Discretionary Review that "this appears to be the first instance of a *warrantless* search for a breath sample outside implied consent." *See* Appl. for Discretionary Review and Stay at ¶ 3. While Mr. Flynn unequivocally denies that this procedure of requesting chemical samples outside of implied consent is consistent with settled law, as urged by the State, Mr. Flynn agrees that the case should be retained by the Iowa Supreme Court, as there is a growing practice among Iowa law enforcement personnel to collect such samples absent compliance with the procedural requirements of Iowa Code sections 321J.6 and 321J.8. Retention is appropriate as this case represents an

issue of profound public importance, given the State's efforts to seriously curtail the statutory rights and protections afforded to Iowa motorists. Iowa R. App. P. 6.1101(2)(d).

STATEMENT OF THE CASE

Mr. Flynn accepts the State's account of the nature of the case as essentially correct. As argued below, Mr. Flynn disputes the State's assertion that the district court's ruling was incorrect. There is substantial authority stating that the implied consent law governs an officer's authority to request a specimen of an individual's blood, breath, or urine for the purpose of determining the individual's alcohol concentration. Because these mandatory procedures were not followed in this case, the district court correctly determined that the results of Mr. Flynn's breath test should be suppressed.

STATEMENT OF THE FACTS

Mr. Flynn accepts the State's account of the relevant facts as setting forth the framework for deciding the issues in this matter. Any other necessary facts will be set forth in the argument below.

ARGUMENT

I. THE DISTRICT COURT CORRECTLY DETERMINED THAT THE CHEMICAL BREATH TEST RESULTS SHOULD BE SUPPRESSED DUE TO NONCOMPLIANCE WITH IOWA'S MANDATORY IMPLIED CONSENT STATUTE.

Preservation of Error

Mr. Flynn does not contest error preservation.

Standard of Review

The district court's interpretation of the application of a statute is reviewed for correction of errors at law. *State v. Romer*, 832 N.W.2d 169, 174 (Iowa 2013). This Court reviews the district court's ruling on Mr. Flynn's motion to suppress "to determine whether the court correctly interpreted and applied chapter 321J." *State v. Demaray*, 704 N.W.2d 60, 62 (Iowa 2005). "[I]f the district court's ruling correctly applied the law and substantial evidence supports its fact findings," the order granting Mr. Flynn's motion to suppress evidence should be affirmed. *State v. Frescoln*, 911 N.W.2d 450, 453 (Iowa Ct. App. 2017).

Argument

Iowa's implied consent law is a creature of statute and balances the interest 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 statutory scheme "is based on the premise that all drivers consent to the withdrawal of a body substance for testing if suspected of driving while intoxicated." *State v. Fischer*, 785 N.W.2d 697, 700 (Iowa 2010). While drivers are "deemed to have impliedly consented to testing, they nonetheless generally have the statutory right to withdraw that consent and refuse to take any test." *State v. Overbay*, 810 N.W.2d 871, 876 (Iowa 2012). "Valid consent therefore

must be given voluntarily with the decision to submit to a chemical test being 'freely made, uncoerced, reasoned, and informed." *Id.* (quoting *State v. Garcia*, 756 N.W.2d 216, 220 (Iowa 2008)). The "ultimate question" for a court in determining whether a driver's consent is voluntary is "whether the decision to comply with a valid request under the implied-consent law is a reasoned and informed decision." *State v. Bernhard*, 657 N.W.2d 469, 473 (Iowa 2003).

Iowa Code sections 321J.6 and 321J.8 establish the procedure for invoking implied consent when an officer suspects a driver has been operating under the influence of alcohol and/or drugs. Section 321J.6 requires that the officer's request to take a sample of the driver's blood, breath, or urine be made in writing prior to the administration of the test:

> A person who operates a motor vehicle in this state under circumstances which give reasonable grounds to believe that the person has been operating a motor vehicle in violation of section 321J.2 or 321J.2A is deemed to have given consent to the withdrawal of specimens of the person's blood, breath, or urine and to a chemical test or tests of the specimens for the purpose of determining the alcohol concentration or presence of a controlled substance or other drugs, subject to this section. The withdrawal of the body substances and the test or tests *shall be* administered at the written request of a peace officer having reasonable grounds to believe that the person was operating a motor vehicle in violation of section 321J.2 or 321J.2A, and if any of the following conditions exist:
>
> *a.* A peace officer has lawfully placed the person under arrest for violation of section 321J.2.
>
> *b.* The person has been involved in a motor vehicle accident or collision resulting in personal injury or death.

> *c.* The person has refused to take a preliminary breath screening test provided by this chapter.
>
> *d.* The preliminary breath screening test was administered and it indicated an alcohol concentration equal to or in excess of the level prohibited by section 321J.2.
>
> *e.* The preliminary breath screening test was administered to a person operating a commercial motor vehicle as defined in section 321.1 and it indicated an alcohol concentration of 0.04 or more.
>
> *f.* The preliminary breath screening test was administered and it indicated an alcohol concentration less than the level prohibited by section 321J.2, and the peace officer has reasonable grounds to believe that the person was under the influence of a controlled substance, a drug other than alcohol, or a combination of alcohol and another drug.
>
> *g.* The preliminary breath screening test was administered and it indicated an alcohol concentration of .02 or more but less than .08 and the person is under the age of twenty-one.

Iowa Code § 321J.6(1) (emphasis added).

Section 321J.8 requires an officer to advise a person who has been requested to submit to a chemical test of the potential consequences of consenting to or refusing the test:

> A person who has been requested to submit to a chemical test *shall be* advised by a peace officer of the following:
>
> *a.* If the person refuses to submit to the test, the person's driver's license or nonresident operating privilege will be revoked by the department as required by and for the applicable period specified under section 321J.9.

> *b*. If the person submits to the test and the results indicate the presence of a controlled substance or other drug, or an alcohol concentration equal to or in excess of the level prohibited by section 321J.2 or 321J.2A, the person's driver's license or nonresident operating privilege will be revoked by the department as required by and for the applicable period specified under section 321J.12.

Id. § 321J.8 (emphasis added).

"'[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.' Detainees are read an advisory and have a statutory right to consult with counsel before taking or refusing the breath test." *State v. Kilby*, 961 N.W.2d 374, 377 (Iowa 2021) (quoting *South Dakota v. Neville*, 459 U.S. 553, 564 (1983)). Iowa courts have acknowledged that the limitations of the implied consent statute "reflects [the legislature's] desire to protect citizens from indiscriminate testing or harassment." *State v. Lindeman*, 555 N.W.2d 693, 695 (Iowa 1996).

a. The legislature intended for the implied consent provisions of Chapter 321J to be mandatory.

The Iowa Supreme Court has described the principles of statutory construction, noting that courts "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). A statute is not ambiguous unless "reasonable minds could disagree as to its meaning." *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 the 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)).

Here, the district court correctly interpreted the legislature's use of the word "shall" in Chapter 321J as indicative of a mandatory scheme for obtaining consent, as opposed to a procedure available at the officer's discretion. *See State v. Klawonn*, 609 N.W.2d 515, 521−22 (Iowa 2000) ("The legislature made this clear in drafting the Iowa Code when it said use of "'shall" imposes a duty,' while "'may" confers a power.' Additionally, we have interpreted the term 'shall' in a statute to create a mandatory duty, not discretion."). Section 321J.6 provides that "[t]he withdrawal of the body substances and the test or tests *shall* be administered at the written request of a peace officer . . . ." *See* Iowa Code § 321J.6(1) (emphasis added). Similarly, section 321J.8 provides that "[a] person who has been requested to submit to a chemical test *shall* be advised by a peace officer of the following . . . ." *Id.* § 321J.8(1) (emphasis added). As the district court correctly noted, "[t]he legislature used the word ***shall*** and this Court is not inclined to engage in some sort of strained mental gymnastics to interpret the

word in a different way." *See* Appendix at 10. The court correctly interpreted and applied the language of Chapter 321J.

In addition to the plain language of the statute, the Iowa Supreme Court has examined the statutory requirements of the implied consent law and determined that "[u]pon a failure to comply with the set standards of our implied consent law the evidence becomes inadmissible." *State v. Baraki*, 981 N.W.2d 693, 697 (Iowa 2022). Among these fundamental prerequisites is that "an officer who has reasonable grounds to believe a driver is operating a vehicle while intoxicated *must* first make a written request to withdraw the driver's blood, urine, or breath to determine the specific concentration of alcohol." *Fischer*, 785 N.W.2d at 701 (emphasis added); *see also* Iowa Code § 321J.6(1). The written request is one of the "foundation requirements" for the admissibility of a chemical test result. *State v. Richards*, 229 N.W.2d 229, 233 (Iowa 1975). It "ensures an accurate and reliable record that a pretest request was made." *Fischer*, 785 N.W.2d at 704. Proof of a written request "is important for trial because an involuntary chemical test is not admissible in criminal proceedings." *Id.* at 703. "The request itself is the only portion that is statutorily required to be in writing and signed by the driver prior to administration of the test." *Id.* at 705.

In addition to making a written request to withdraw the driver's blood, urine, or breath, courts have held that the officer must "advise the person of certain consequences that may result from the decision" to consent or refuse the

test. *State v. Overbay*, 810 N.W.2d 871, 876 (Iowa 2012). Iowa courts have reiterated that "the officer *must* inform the motorist of the potential periods of license revocation associated with refusal to take the test or with a positive test result." *Id.* (emphasis added).

> The clear intent of section 321J.8 is to provide a person who has been required to submit [to] a chemical test a basis for evaluation and decision-making in regard to either submitting or not submitting to the test. This involve[s] a weighing of the consequences if the test is refused against the consequences if the test reflects a controlled substance, drug, or alcohol concentration in excess of the "legal" limit.

Id. (alterations in original) (quoting *Voss v. Iowa Dep't of Transp.*, 621 N.W.2d 208, 212 (Iowa 2001)). "[T]he duty to provide the information found in section 321J.8 is mandatory." *Dickerson v. Iowa Dep't of Transp.*, No. 10-0126, 2010 WL 2384866, at *4 (Iowa Ct. App. June 16, 2010).

Notwithstanding the ample authority recognizing the mandatory nature of implied consent, the State posits that the requirements of implied consent are only mandatory if the officer affirmatively "invokes" implied consent. The State contends that such a request may be made, at the officer's sole discretion, as a general request akin to a request to search an individual's vehicle. In making this argument, the State relies primarily on dicta appearing in *State v. Wallin* and *State v. Demaray*. However, the State's reliance on these cases is misplaced. As an initial matter, neither case involved a court admitting evidence of a chemical test based on an officer's general request to extract a bodily specimen outside of implied

consent. In *Wallin*, the Iowa Supreme Court found that it was reversible error to admit blood test evidence obtained without a written request required by Chapter 321J (formerly 321B) directing the doctor to withdraw a blood sample. *State v. Wallin*, 195 N.W.2d 95, 97 (Iowa 1972). The test results were also inadmissible because the blood withdrawal was made with a syringe and needles that did not meet statutory specifications. *Id.* In so holding, the court noted that the implied consent law:

> provides that when a person has been placed under arrest for operating a motor vehicle while under the influence of an intoxicating beverage, a blood or other chemical test to determine the alcoholic content of his blood may be demanded by written request of a peace officer having reasonable grounds to believe the person guilty that offense. Consent may be refused, in which event no test may be required and the suspension provisions of section 321B.7 become operative.
>
> If however, consent is given, as it was here, the statute prescribes the test shall be given within (1) two hours after arrest; by (2) a licensed physician, or a medical technologist or registered nurse designated by a licensed physician as his representatives, acting at the written request of a peace officer; and by the use of (3) 'only new, originally factory wrapped, disposable syringes and needles, kept under strictly sanitary and sterile conditions.'

Id. at 96–97.

The court also emphasized that "[t]hese protective standards were adopted by the legislature both to protect the health of the person submitting to a test and to guarantee its accuracy for use in later judicial proceedings." *Id.* at 97.

While the State points to the *Wallin* court's recitation from prior case law that "[c]onsent may be given independent of this chapter; and the requirements of the Implied Consent Law may be waived," it is important to understand the context under which the court made this statement. The court recognized that this concept was implicit in prior decisions, but the relevant discussion involved the court distinguishing the holdings of prior cases in response to the State's argument that "departures from the statute are unimportant." *Id.* Notably, none of the cases cited by the court in this discussion involved an *officer's request* to extract a bodily specimen from an individual suspected of operating under the influence for the purpose of chemical testing. For example, in *State v. Boner*, the Iowa Supreme Court, in fact, held that the trial court should have suppressed the evidence of the blood sample at issue, as the requirements of the implied consent law were not followed—namely, that there be a certificate of the physician who withdrew the blood specimen in advance of the test, as well as a request in writing by the arresting officer or any other peace officer to the physician to administer the test. *State v. Boner*, 186 N.W.2d 161, 165 (Iowa 1971). The *Wallin* court also cited to *State v. Charlson* in recognizing that consent may be given apart from the implied consent law. However, in *Charlson*, the specimen was taken at the specific request of the defendant—not the request of a peace officer. *State v. Charlson*, 154 N.W.2d 829, 830 (Iowa 1967). Thus, with that context in mind, the reference that "[c]onsent may be given independent of this chapter" refers to those

instances that did not involve an *officer's* request for a sample to be used for chemical testing. It does not, in fact, represent well-settled authority permitting law enforcement to evade the implied consent procedure by making general requests for samples of blood, breath, or urine outside of implied consent. Rather, it is nothing more than an acknowledgement that officers may utilize such chemical testing evidence that exists for other reasons (i.e., at the request of the defendant).

The State also relies heavily on *State v. Demaray* in urging that this Court overlook the mandatory requirements of sections 321J.6 and 321J.8. However, contrary to the State's assertions, the facts of this case are not similar to the situation in *Demaray*. In *Demaray*, the defendant was taken by ambulance to a hospital because of injuries sustained in a car accident. *State v. Demaray*, 704 N.W.2d 60, 61 (Iowa 2005). The officer did not accompany the defendant to the hospital because he was the only deputy on call that night and remained at the accident scene. *Id.* When another deputy went to the hospital to invoke implied consent, he was unable to see the defendant because a doctor was treating the defendant's injuries. *Id.* Although officers were unable to request chemical testing under the implied consent procedure, the State sought to admit into evidence the results of a blood test the hospital performed for treatment purposes. *Id.* The officer obtained the test results after defendant consented to the release of his medical records to the officer, which included the results of the blood test. *Id.*

The court ultimately held that the test results were admissible even though they were not obtained by the officer's invocation of implied consent procedures, as the language of Iowa Code section 321J.18 provides that "[t]his chapter does not limit the introduction of any competent evidence bearing on the question of whether a person was under the influence of an alcoholic beverage or controlled substance or other drug." *Id.* at 63. In effect, the State could rely on the defendant's medical records and the blood results contained therein, notwithstanding the fact that such results were obtained independent of the implied consent procedure.

The State misconstrues the holding in *Demaray* in arguing that an officer requesting a chemical sample from a suspect may, in the officer's sole discretion, bypass the requirements of the implied consent statue by simply asking the suspect if he or she would agree to provide a sample for chemical testing. The distinction that the State ignores is that the test results that were held admissible in *Demaray* were not a consequence of *the officer* making a request to collect a sample of the defendant's blood for chemical testing. Various circumstances prevented the officer from making such a request. However, the officer was able to obtain independent evidence that existed because the treating health care providers had collected a blood sample for treatment purposes.

In the present case, there were no extenuating circumstances that prevented Deputy Freund from complying with the mandatory implied consent

procedures. In fact, he had ample opportunity to do so when he made his request for a sample of Mr. Flynn's breath for testing. Earlier in his investigation, Deputy Freund utilized other aspects of Chapter 321J, requesting that Mr. Flynn provide a sample of his breath for a preliminary breath test ("PBT") pursuant to Iowa Code section 321J.5. *See* Minutes of Testimony (D0009) at 6. Based on the results of the PBT, Mr. Flynn was placed under arrest and was read his *Miranda* warnings. *Id.* The PBT result and subsequent arrest are both conditions precedent to an officer's request for a breath sample. *See* Iowa Code §§ 321J.6(1)(a), (d). Despite initially following the procedural requirements of Chapter 321J, Deputy Freund then abandoned the statutorily proscribed investigative procedure when requesting a sample of Mr. Flynn's breath for testing on the Datamaster by failing to make a written request for the sample and by failing to advise Mr. Flynn of the consequences of refusing the test and the consequences of a test result that exceeds the legal limit. The authority cited by the State does not excuse Deputy Freund's failure to comply with the implied consent requirements and render the test results admissible simply because Mr. Flynn acquiesced to the general request. While the express language of Chapter 321J does not limit the introduction of competent evidence legally obtained by methods other than implied consent (i.e., medical records or a request for chemical testing made by the defendant), it does *not* say that an officer who requests a chemical sample for the purpose of testing blood-alcohol

concentration has the discretion to deviate from those procedures outlining how such a request is to be made.

b. There is no support for the State's position that the requirements of section 321J.6 and section 321J.8 apply only where a peace officer deliberately "invokes" implied consent as distinguished from a situation where a peace officer obtains general consent.

The State attempts to parse the requirements of Chapter 321J by making the distinction between implied consent requests and non-implied consent requests, stating that the requirements of sections 321J.6 and 321J. 8 only apply "where motorists *submit to* a test request or face consequences for refusal." Such a hyper-technical distinction wholly ignores well-settled authority that makes clear that the procedures outlined in sections 321J.6 and 321J.8 are mandatory. Iowa courts have held that "Iowa's implied consent statute, Iowa Code section 321J.6, *governs an officer's authority to request a chemical test* for purposes of determining alcohol concentration." *State v. Rolling*, No. 04-0128, 2005 WL 723985, at *3 (Iowa Ct. App. Mar. 31, 2005) (emphasis added). As the Iowa Supreme Court has further explained:

> Chapter 321J allows chemical testing of bodily substances from persons suspected of driving while intoxicated. The legislature, however, *limited the circumstances under which such a test may be demanded*. The withdrawal of bodily substances and the chemical test *must* be "administered at the written request of a peace officer having reasonable grounds to believe that the [defendant] was operating a motor vehicle in violation of section 321J.2." In addition, one of six specified conditions must exist.

State v. Lindeman, 555 N.W.2d 693, 695 (Iowa 1996) (emphasis added). The legislature's decision to limit testing pursuant to the specific circumstances described in the implied consent statute "reflects its desire to protect citizens from indiscriminate testing or harassment." *Id.*

> There is another reason for strictly applying our implied-consent statute—the sensitive and unique nature of any procedures involving intrusions into the human body. The Supreme Court recognized this in *Schmerber v. California*, 384 U.S. 757 (1966). The Court acknowledged the general right of officers to search persons incident to lawful arrest but said:
>
>> Whatever the validity of these considerations in general, they have little applicability with respect to searches involving intrusions beyond the body's surface. The interests in human dignity and privacy which the Fourth Amendment protects forbid any such intrusions on the mere chance that desired evidence might be obtained.
>
> While the Court recognized the right of officers in some cases to make body-invasive searches, it said:
>
>> It bears repeating, however, that we reach this judgment only on the facts of the present record. The integrity of an individual's person is a cherished value of our society. That we today hold that the Constitution does not forbid the States['] minor intrusions into an individual's body *under stringently limited conditions* in no way indicates that it permits more substantial intrusions or intrusions under other conditions.

State v. Christianson, 627 N.W.2d 910, 913 (Iowa 2001) (quoting *Schmerber v. California*, 384 U.S. 757, 769-70, 772 (1966)).

Further, there is little logic to the State's efforts at distinguishing a "request to submit" and a "request for consent." As the State notes, section 321J.6(1) explains that "[a] person who operates a motor vehicle in this state . . . is deemed to have given consent to the withdrawal of specimens for the purpose of determining the alcohol concentration." Iowa Code § 321J.6(1). Pursuant to this language, it is undisputed that Mr. Flynn impliedly consented to the withdrawal of his breath if certain conditions existed. *Id.* Given that he was placed under arrest and his PBT showed an alcohol concentration equal to or in excess of the level prohibited by section 321J.2, Mr. Flynn effectively consented to the withdrawal of a specimen of his breath for chemical testing, and any withdrawal of a body substance for testing "shall be administered" as articulated by sections 321J.6 and 321J.8, subject to Mr. Flynn's refusal to submit. If such consent to testing already exists under section 321J.6, there is simply no reason to "seek consent to a chemical test *outside* of implied consent," as argued by the State. In reality, the only reason for law enforcement to seek general consent at this point in the investigation is because it would allow the State to obtain the test results without the procedural safeguards that otherwise ensured that the motorist's "decision to provide a sample for chemical testing be reasoned and informed." *State v. Frescoln*, 911 N.W.2d 450 (Iowa 2017). Instead, law enforcement would be allowed to do nothing other than pose the following to motorists: "Would you be willing to give a sample of your breath for chemical testing on the state-

certified machine?" *See* Def.'s Br. in Support of Mot. to Suppress Evidence (D0015) at 4. Further, if Mr. Flynn responded that he was not willing to give a sample of his breath in response to the officer's question, it would allow the officer to then apply for a warrant, which would otherwise be prohibited under the implied consent law. *See State v. Hitchens*, 294 N.W.2d 686, 687–88 (Iowa 1980). While the State contends Deputy Freund's request constitutes a request for consent "outside of implied consent," it is difficult to see how this is distinct from a "request to submit," given that, under either interpretation, the motorist is ultimately being asked to provide a sample of breath for chemical testing.

Further, this distinction would only create conflict and confusion at the trial court level as courts would be required to analyze whether requests for testing are made outside of or pursuant to implied consent. Rather than a uniform set of procedures related to such requests for testing, law enforcement could assert that any failure to follow the procedures of Chapter 321J was simply a product of the request being made outside implied consent. Courts will also be faced with resolving a number of questions regarding the applicability of other sections in Chapter 321J: Will samples requested outside of implied consent be subject to section 321J.11 or 321J.15 in order to be admissible? Is a defendant entitled to an independent test? If convicted, will the defendant be able to obtain a deferred judgment? Will a conviction still trigger a driver's license suspension

under 321J.4 even when other provisions of Chapter 321J were not followed? The State's position creates ambiguity where there previously was none and will undoubtedly cause confusion as courts attempt to decipher which provisions of Chapter 321J apply.

c. Reversal of the trial court's ruling will effectively eviscerate the implied consent statute, as law enforcement can guarantee a test result without having to comply with implied consent.

The State argues that implied consent is simply *a* tool in law enforcement's toolbox that law enforcement may reach to if needed. The State posits that "[t]he whole point of implied consent is to give officers *additional* options for how to investigate suspected OWI." This is not true. As discussed above, there is substantial authority to support the mandatory nature of implied consent. There is simply no logical reason for the State's position that the legislature articulated a detailed implied consent procedure as a tool to supplement existing investigative methods. While the State argues extensively about law enforcement's need for a variety of methods to investigate potentially intoxicated drivers, it ignores the fact that the implied consent provisions were specifically enacted to balance competing concerns. Implied consent was not enacted for the sole purpose of aiding law enforcement in its ability to investigate intoxicated drivers, but also to protect the privacy interests of motorists. *See State v. Palmer*, 554 N.W.2d 859, 863 (Iowa 1996).

> Iowa's implied consent law is the product of competing concerns. On one hand, the legislature wanted to provide an effective mechanism to identify intoxicated drivers and remove them from the highways. On the other hand, the legislature was aware implied consent procedures invade a cherished privacy interest of the public. Therefore, chapter 321J contains limitations on the power of the State to invoke these procedures.

Id.

Given the unique nature of chemical testing in relation to intoxicated drivers, the Iowa legislature devised a clear scheme that was intended to balance the competing interests at play. It defies logic to suggest that these carefully devised procedures, which account for these competing interests, could be disregarded at the State's discretion. The State's focus on implied consent as one of many investigative tools ignores the equally important purpose of implied consent—ensuring that motorists are informed when weighing the decision of whether to submit to a body-invasive search. *See State v. Frescoln*, 911 N.W.2d 450, 453 (Iowa 2017) ("[I]t is imperative that the decision to provide a sample for chemical testing be reasoned and informed."). The State implies that by eliminating the option of seeking consent outside of the implied consent procedures law enforcement's ability to investigate intoxicated drivers will be hindered. However, Iowa courts have been skeptical of such arguments, noting that "[b]efore the State raises the spectre of being disarmed by judicial fiat in its war against drunk drivers, it should use the tools supplied by the General

Assembly." *State v. Henneberry*, 558 N.W.2d 708, 711 (Iowa 1997) (quoting *State v. Smorgala*, 553 N.E.2d 672, 675 (Ohio 1990)).

Finally, the trial court correctly noted that if law enforcement was given the choice to bypass the implied consent statute, it would render the statute effectively useless as the State could simply avoid the technicalities of the statute altogether by never invoking implied consent. *See* Appendix at 10. Given that the suspect would suffer a license revocation if eventually convicted, and given that the State would virtually guarantee a test result in every case by simply obtaining a search warrant in any case the suspect refuses to consent, the State would be *incentivized* to avoid invoking implied consent. Such a result would contradict Iowa authority articulating the "stringently limited conditions" pursuant to which an officer may request chemical testing. *State v. Christianson*, 627 N.W.2d 910, 914 (Iowa 2001).

CONCLUSION

The district court's order granting Mr. Flynn's motion to suppress was consistent with well-settled law recognizing the mandatory procedural requirements of Iowa's implied consent law. Mr. Flynn respectfully requests that this Court affirm the trial court's decision granting the motion to suppress evidence.

REQUEST FOR ORAL ARGUMENT

Appellee respectfully requests oral argument.

JEFFREY JOHN FLYNN,
Defendant/Appellee

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PROOF OF SERVICE AND CERTIFICATE OF FILING

I certify that on January 17, 2024, I, the undersigned party or person acting in their behalf, did serve Appellee's Final Brief on counsel for all parties to this action using the Iowa Judicial Branch EDMS system, which will send notification of such filing to all counsel and all parties to this action.

I certify that on January 17, 2024, I filed Appellee's Final Brief with the Clerk of the Iowa Supreme Court using the Iowa Judicial Branch EDMS system.

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/s/ Alyssa M. Carlson ___________