IN THE SUPREME COURT OF IOWA

No. 23-1371
District Court No. LACL152315

SILVIA R. CIANZIO,
Plaintiff-Appellant,

vs.

IOWA STATE UNIVERSITY, STATE OF IOWA AND BOARD OF REGENTS, STATE OF IOWA,
Defendants-Appellees.

ON APPEAL FROM THE IOWA DISTRICT COURT IN
POLK COUNTY CASE NO. LACL152315
ORDER DATED AUGUST 2, 2023

THE HONORABLE HEATHER LAUBER
DISTRICT COURT JUDGE

PLAINTIFF-APPELLANT'S FINAL BRIEF
(Oral Argument Requested)

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ROUTING STATEMENT

This appeal should be retained by the Iowa Supreme Court pursuant to Iowa Rule of Appellate Procedure 6.1101(2) because it presents a substantial question of statutory interpretation, which the District Court concluded had not been previously resolved by the Supreme Court.

STATEMENT OF THE CASE

On January 12, 2022, Plaintiff-Appellant Silvia Cianzio ("Cianzio") filed this action in Polk County District Court seeking recovery under the Iowa Civil Rights Act for pay discrimination based on Defendants' payment of wages to Cianzio that were less than the wages Defendants paid to male professors at Iowa State University ("ISU") who performed work equal to Cianzio. App. 4-9. Count I is a claim for violation of Iowa Code § 216.6A, the ICRA's equal pay provision, and Count II is a claim for violation of Iowa Code § 216.6, the ICRA's general prohibition against discrimination based on gender. In Count I, Cianzio seeks recovery of the statutory damages set out in § 216.15(9)(a)(9)(a)-(b), the damage provision applicable to claims for wage discrimination under § 216.6, which provides for damages of "an amount equal to two (or three) times the wage differential paid to another employee compared to the complainant for the period of time for which the complainant has been discriminated against." App. 8. In Count II, Cianzio seeks recovery

of statutory damages set out in § 216.15(9)(a)(8), the damage provision applicable to claims of discrimination under § 216.6—"actual damages, court costs and reasonable attorney fees." App. 9.

On February 10, 2022, Defendants filed a partial motion to dismiss asking the District Court to dismiss Cianzio's claims under **both** counts in the Petition for any statutory damages incurred before October 16, 2020, or 300 days prior to the filing of her civil rights complaint with the Iowa Civil Rights Commission. App. 16.

On February 17, 2022, Cianzio resisted Defendants' motion to dismiss with regards to Count I brought pursuant to Iowa Code § 216.6A relying on the clear language of the applicable damage provision that allows recovery during the entire period of discrimination. App. 18.

On August 2, 2023, the District Court granted Defendants' motion to dismiss in part, concluding that Cianzio was limited to recovering statutory damages for a violation of § 216.6A to the two years preceding the filing of the administrative complaint. The District Court stated,

> While the wording of Iowa Code §216.15(9)(a)(9)(a)-(b) does appear to lengthen the statute of limitations, and can certainly be read to allow recovery for the entire period of discrimination, irrespective of the length of that period, reasonable minds could differ or be uncertain as to the meaning of period of time for which the complainant has been discriminated against.
> App. 46 (citations omitted).

The District Court went on to apply the two-year statute of limitations contained in Iowa Code § 614.1(8) applicable to claims for unpaid wages. App. 47.

Cianzio filed an application for interlocutory appeal on August 25, 2023, that was granted on October 4, 2023. The sole question presented in this appeal is whether Iowa Code § 216.15(9)(a)(9)(a)-(b) provides that Cianzio is entitled to recover statutorily mandated damages during the entire period of discrimination (dating back to 2009).

STATEMENT OF THE FACTS

Plaintiff-Appellant Silvia Cianzio is a professor emeritus at Iowa State University in the Department of Agronomy. Cianzio began working for ISU as a research associate while a graduate student in the Department of Agronomy. Following the completion of her Ph.D., Cianzio held a postdoctoral position until she was selected as an assistant professor in 1979; promoted to associate professor in 1984; and promoted to a full professor in 1995. Cianzio was a full professor for 25 years before retiring to emeritus status at the end of 2020. App. 4-5.

The Agronomy Department is part of the College of Agriculture and Life Sciences at ISU and focuses on the science of soil management and crop production. Cianzio is a plant geneticist, and her focus is on soybean breeding.

Throughout her tenure at ISU, Cianzio oversaw and conducted research that resulted in many germplasm and cultivar releases. Cianzio has extensively published and presented in her area of expertise and has been recognized for her academic and scientific achievements by numerous organizations throughout the world. During her 41-year career as a professor, Cianzio was one of very few women professors in the Agronomy Department.

In 2020, Cianzio was selected to Chair of the Agronomy Department Committee on Diversity, Inclusion and Equity. In this role, the Dean of the College of Agriculture assigned Cianzio the task of overseeing a survey project titled "Climate – Diversity, Inclusion & Equity." As part of this project, Cianzio and other members of the committee reviewed the salaries of professors within the Agronomy Department and found that male professors were being paid more than female professors throughout the department in each category of professorship and in each research focus. For example, there were 22 full professors in the Agronomy Department, which included three women and 19 men. The female full professors earn on average substantially less than male professors. Additionally, there were two female associate professors out of five and the two female associate professors were the lowest paid. Finally, there were two female assistant professors out of seven total

assistant professors and one of the female professors is the lowest paid while the other is the third lowest paid.

Cianzio was one of six full professors specializing in plant breeding and was the only female in this specialty. Cianzio was the lowest paid professor specializing in plant breeding, despite having academic and scientific achievements that met or exceeded those of her male counterparts. Cianzio was paid between $11,276 and $46,049 less per year than male professors with the same specialty who were performing equal work to Cianzio.

Cianzio reported the pay discrimination found in the survey project to the Chair of the Agronomy Department, the Dean and Associate Dean of the College of Agriculture and Life Sciences and the Human Resources Department. ISU responded by acknowledging that women professors were paid less than male professors but stated that they did not intend to take any action to correct the inequity because they did not believe it to be a significant inequity as per statistical analysis conducted by a private law firm.

Cianzio retired from her position at ISU on December 31, 2020, and received her last paycheck impacted by a discriminatory pay decision on the same date. On August 12, 2021, within 300 days of receipt of her last paycheck, Cianzio filed a complaint with the Iowa Civil Rights Commission.

ARGUMENT

I. THE DISTRICT COURT'S RULING SHOULD BE REVIEWED FOR ERRORS AT LAW

This is an appeal of a partial grant of Defendants' motion to dismiss. In ruling on a motion to dismiss, "all the well-pleaded allegations in the petition [are] deemed as true, and the motion to dismiss [should be] granted only if there [is] no conceivable state of facts under which the nonmoving party [is] entitled to relief." *Mormann v. Iowa Workforce Dev*., 913 N.W.2d 554, 565 (Iowa 2018) (citations omitted). The District Court's ruling is based on the Court's interpretation of Iowa Code § 216.6A and § 216.15 and therefore the standard of review is for errors at law. *Vance v. Iowa Dist. Ct. for Floyd Cnty.*, 907 N.W.2d 473, 476 (Iowa 2018) ("Our standard of review for questions of statutory interpretation is for correction of errors at law.").

II. AN EMPLOYEE WHO PROVES AN EMPLOYER VIOLATED IOWA CODE § 216.6A IS ENTITLED TO RECOVER STATUTORY DAMAGES PURSUANT TO § 216.15 DURING THE ENTIRE PERIOD OF DISCRIMINATION DATING BACK TO 2009

It is clear from the language of the statute and the Iowa Supreme Court's prior decision in *Dindinger v. Allsteel* that an employee who proves that they have been subject to wage discrimination in violation of Iowa Code § 216.6A is entitled to recover two or three times the applicable wage differential during the entire period the employer violated § 216.6A dating

back to 2009, when the section was enacted. A review of the history and context in which § 216.6A and the corresponding damage provision were enacted demonstrates that the legislature expressly chose to allow recovery of statutory damages during the entire period of discrimination in order to best promote the purpose of the legislation—"to correct and as rapidly as possible eliminate" wage discrimination in the state of Iowa. The District Court erred by imposing an arbitrary two-year limitation on an employee's right of recovery, particularly given that the legislature rejected this exact limitation in 2017 when it was proposed as an amendment to § 216.15 that was voted down.

As the Supreme Court has noted, Iowa, with the enactment of § 216.6A, became the third state to allow recovery of statutory damages for unequal pay claims during the entire period of discrimination, demonstrating that the policy of this State is to place the burden of equal pay on employers who have both the information and the power to eliminate pay discrimination.

A. The Statutory History of § 216.6A and a Similar Federal Statute Explains the Legislature's Use of Unambiguous Language Mandating Recovery During the Entire Period of Discrimination.

As detailed below, the language at issue—"period of time for which the complainant has been discriminated against"—is not ambiguous. While a review of the history and the context is not necessary in order to interpret the

statute, such review does further demonstrate that the text is unambiguous. *Iowa Ins. Inst. v. Core Grp. of Iowa Ass'n for Just.*, 867 N.W.2d 58, 72 (Iowa 2015) (context can show ambiguity or lack of ambiguity). This history and context is also simply helpful in understanding § 216.6A and the corresponding damage provision.

In 2009, Iowa enacted § 216.6A, creating a new cause of action expressly prohibiting wage discrimination under the Iowa Civil Rights Act ("ICRA"). Section 216.6A sets forth the elements of a wage discrimination claim, identifies the available affirmative defenses, and lists those discriminatory acts that trigger the 300-day deadline for filing an administrative complaint set forth in Iowa Code § 216.15(13). With the enactment of § 216.6A, the Iowa Legislature amended § 216.15 to add a damage provision applicable only to wage discrimination claims brought under § 216.6A. The enactment of § 216.6A, and the corresponding damage provision, occurred within the larger context of Congress' amendment to Title VII in response to a U.S. Supreme Court decision and a review of this history illustrates why Iowa chose the language and applicable recovery period used in the ICRA for wage discrimination claims.

In 2009, months before the enactment of § 216.6A, Congress amended Title VII by enacting the Ledbetter Fair Pay Act in response to the U.S.

Supreme Court's 2007 decision in *Ledbetter v. Goodyear Tire & Rubber Co*., 550 U.S. 618 (2007).[1] The amendment states:

> For purposes of this section, an unlawful employment practice occurs, with respect to discrimination in compensation in violation of this subchapter, when a discriminatory compensation decision or other practice is adopted, when an individual becomes subject to a discriminatory compensation decision or other practice, or when an individual is affected by application of a discriminatory compensation decision or other practice, including each time wages, benefits, or other compensation is paid, resulting in whole or in part from such a decision or other practice.
>
> [L]iability may accrue and an aggrieved person may obtain relief … including recovery of back pay for up to two years preceding the filing of the charge, where the unlawful employment practices that have occurred during the charge filing period are similar or related to unlawful employment practices with regard to discrimination in compensation that occurred outside the time for filing a charge.
> 42 U.S.C. § 2000e-5(3)(A) and (B).

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[1] In *Ledbetter*, the majority of the Court rejected the "paycheck accrual rule" adopted by a number of Circuits and held that an EEOC charge was untimely if filed more than 180 days after the employer's discriminatory pay decision, even if paychecks impacted by the prior decision were paid within the 180-day period.

Justice Ginsburg, on behalf of the four-justice minority, strongly argued that an administrative complaint was timely filed if filed within receipt of a paycheck impacted by a discriminatory pay decision regardless of when the decision was made. Justice Ginsberg noted an employer—and not an employee—is always aware of unequal pay and always has the power to remedy it. In conclusion, Justice Ginsberg called on congress to act stating, "[T]he ball is in Congress' court. [T]he Legislature may act to correct this Court's parsimonious reading of Title VI." *Ledbetter*, 550 U.S. at 661.

Under Title VII, after amended by the Ledbetter Fair Pay Act, 1) every paycheck that is impacted in whole or in part by a prior discriminatory pay decision is a violation of Title VII; 2) an administrative complaint filed within 300 days of receipt of any impacted paycheck is timely filed; and 3) plaintiffs are entitled to recover damages caused by the discriminatory pay for the two years preceding the filing of the charge.

The Ledbetter Fair Pay Act is an amendment to Title VII; however, in addition to Title VII, the Federal Equal Pay Act (contained in the FLSA) also expressly prohibits discriminatory pay based on gender, stating:

> No employer having employees subject to any provisions of this section shall discriminate, within any establishment in which such employees are employed, between employees on the basis of sex by paying wages to employees in such establishment at a rate less than the rate at which he pays wages to employees of the opposite sex in such establishment for equal work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions, except where such payment is made pursuant to (i) a seniority system; (ii) a merit system; (iii) a system which measures earnings by quantity or quality of production; or (iv) a differential based on any other factor other than sex: Provided, That an employer who is paying a wage rate differential in violation of this subsection shall not, in order to comply with the provisions of this subsection, reduce the wage rate of any employee.
> 29 U.S.C. § 206.

The EPA, unlike Title VII, is a strict liability statute and imposes liability on employers for the payment of unequal wages between men and

women without regard to intent. *Bauer v. Curators of Univ. of Missouri*, 680 F.3d 1043, 1045 (8th Cir. 2012) ("The EPA, a strict liability statute, does not require plaintiffs to prove that an employer acted with discriminatory intent; plaintiffs need show only that an employer pays males more than females.").

In 2009, Iowa essentially adopted its own Equal Pay Act by amending the Iowa Civil Rights Act to add § 216.6A, stating, "The general assembly declares that it is the policy of this state to correct and, as rapidly as possible, to eliminate, discriminatory wage practices based on . . . sex . . . ." Section 216.6A is largely a combination of the language contained in the EPA and the Ledbetter Fair Pay Act. The Act states:

> It shall be an unfair or discriminatory practice for any employer or agent of any employer to discriminate against any employee because of the … sex, … of such employee by paying wages to such employee at a rate less than the rate paid to other employees who are employed within the same establishment for equal work on jobs, the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions. . . .
> Iowa Code § 216.6A.

Section 216.6A goes on to identify the same four affirmative defenses set out in the EPA. As the Iowa Supreme Court noted, like the EPA, § 216.6A is a strict liability claim, stating,

> Under section 216.6A of the Iowa Code, an employer that pays lower wages for equal work to a person in a protected class violates the law without regard to the employer's intent. Note the distinct wording of section 216.6A. It makes it illegal "to

> discriminate against any employee . . . by paying wages to such employee at a rate less than the rate paid to other employees. . . Thus, rather than requiring discrimination based on protected status to be independently proved, section 216.6A defines discrimination as the act of paying lower wages. *Dindinger v. Allsteel, Inc.*, 860 N.W.2d 557, 564 (Iowa 2015).

The remainder of § 216.6A mirrors the Ledbetter Fair Pay Act, stating,

> For purposes of this subsection, an unfair or discriminatory practice occurs when a discriminatory pay decision or other practice is adopted, when an individual becomes subject to a discriminatory pay decision or other practice, or when an individual is affected by application of a discriminatory pay decision or other practice, including each time wages, benefits, or other compensation is paid, resulting in whole or in part from such a decision or other practice.
> Iowa Code § 216.6A.

With the enactment of § 216.6A, the Iowa Legislature also enacted a special damages provision applicable to claims of unequal pay that provides that an employee who has been subjected to wage discrimination in violation of § 216.6A is entitled to "[a]n amount equal to two [or three] times the wage differential paid to another employee compared to the complainant for the period of time for which the complainant has been discriminated against." Iowa Code § 216.15(9)(a)(9)(a).

Given that § 216.6A was enacted only months after the Ledbetter Fair Pay Act and contains the same language, it is clear that the Fair Pay Act was the impetus for the enactment of § 216.6A. While the Fair Pay Act expressly sets forth a recovery period of two years for the statutory damages available,

the Iowa Legislature set the period of recovery for statutory damages at "the period of time for which the complainant has been discriminated against."[2] Iowa also chose to provide for enhanced damages of double or treble the wage differential, further indicating the legislatures' intent to remedy past wage discrimination and motivate employers to take affirmative steps to end wage discrimination.

Considering this history and context, it is clear that the District Court erred in concluding that the recovery period for statutory damages for a violation of § 216.6A is limited to two years and equally clear that Defendants' request for a 300-day limit on damages is meritless. It is undisputed that Cianzio filed a complaint with the Iowa Civil Rights Commission within 300 days of a paycheck impacted by a discriminatory pay decision. Cianzio is entitled to recover statutory damages for the entire period that she was subjected to pay discrimination dating back to 2009 under the ICRA.

[2] As detailed more below, in 2017, an amendment was introduced to limit the recovery period for claims under § 216.6A (SSB1231); however, the bill failed to pass.

B. The Plain Language of the Statute Makes Clear the Recovery Period for a Violation of Iowa Code § 216.6A Is the Entire Period of Discrimination.

The District Court erred in concluding that the phrase "the period of time for which the complainant has been discriminated against" is ambiguous. App. 46-47.

> The intent of the legislature in enacting [a statute] which is controlling here is to be gathered from the statute itself. It is [the Court's] duty to give it the interpretation its language calls for and not to speculate as to probable legislative intent apart from the wording used. "We do not inquire what the legislature meant. We ask only what the statute means."
> *Kruck v. Needles*, 144 N.W.2d 296, 301 (Iowa 1966).

The District Court erred by substituting its own judgment regarding an appropriate recovery period for the recovery period set forth in the language of the statute. The District Court stated,

> [T]he court agrees with the defendants that allowing a plaintiff to recover for a relatively unlimited time frame—perhaps limited only by a person's work lifespan—would produce impractical or absurd results and would reward a plaintiff for failing to report discriminatory wage practices when those practices are discovered.
> App. 47.

The District Court erred by weighing the interest of the employer and the employee and substituting its own judgment for that of the legislature's as expressed by the words it chose.

> Even in construing statutes courts search for the legislative intent as shown by what the legislature said, rather than what it should

> or might have said. This proposition is so well established that authorities need not be cited for it. We have frequently pointed out it is not the province of courts to pass upon the policy, wisdom or advisability of a statute. They are questions for the legislature.
> *Id.*

If the legislature had intended for the recovery period to be limited to two years for the reasons set forth in the District Court's opinion, it would have chosen language creating that limitation.[3] This is particularly true given that the federal statute that was the model for § 216.6A and the corresponding damage provision at issue expressly included a two-year limitation on the calculation of damages.

The District Court has confused the statute of limitations with the method of calculating damages set forth in the corresponding damage

[3] There are compelling reasons the legislature chose to measure damages by the entire period of discrimination. The employer knows whether men and women are being paid equally, whereas many employees do not have access to this information. "The employer always has the ability to reexamine and correct an improper pay-setting decision." *Dindinger v. Allsteel, Inc.*, 860 N.W.2d 557, 573 (Iowa 2015). Additionally, it would be grossly unfair for the employer to financially benefit from paying women less than men. If an employer has been underpaying women for years, the burden should fall to the employer and not the women. Finally, the remedy provision is clearly intended to motivate employers to correct wage discrimination. The Equal Pay Act was enacted 60 years ago and the progress towards equal pay has been glacially slow. The enhanced remedies are clearly intended to motivate employers to fix a devastating problem that despite the enaction of other legislation, has remained a substantial problem in the workplace and in society.

provision enacted along with Iowa Code § 216.6A. The statute of limitations for all claims brought under the Iowa Civil Rights Act is found in Iowa Code § 216.15(13), which states, "Except as provided in section 614.8, a claim under this chapter shall not be maintained unless a complaint is filed with the commission within 300 days after the alleged discriminatory or unfair practice occurred."

There is no separate statute of limitations applicable to wage claims brought under § 216.6A, as such claims must be filed within 300 days of the discriminatory or unfair practice; however, § 216.6A has adopted a specific definition for determining when a discriminatory or unfair practice occurs for triggering the 300-day statute of limitations that is nearly identical to that that was adopted in Title VII.

> The purpose of the FPA "was to reinstate the law regarding the timeliness of pay compensation claims as it was prior to the *Ledbetter* decision, which Congress believed undermined statutory protections against compensation discrimination by unduly restricting the time period in which victims could challenge and recover for discriminatory compensation decisions." Thus, pursuant to the FPA, each paycheck that stems from a discriminatory compensation decision or pay structure is a tainted, independent employment-action that commences the administrative statute of limitations.
> *Noel v. The Boeing Co.*, 622 F.3d 266, 271 (3d Cir. 2010).

Section 216.6A(2)(B) states in relevant part,

> For purposes of this subsection [meaning 216.6A(2)], an unfair or discriminatory practice occurs when a discriminatory pay

> decision or other practice is adopted, when an individual becomes subject to a discriminatory pay decision or other practice, or when an individual is affected by application of a discriminatory pay decision or other practice, including each time wages, benefits, or other compensation is paid, resulting in whole or in part from such a decision or other practice.

This section defines when "a discriminatory or unfair practice" **occurs** for the purpose of determining the timeliness of the administrative complaint pursuant to Iowa Code § 216.15(13).

The remedies for all violations of the ICRA are set forth in Iowa Code § 216.15(9) and includes "remedial action." Remedial action is defined in § 216.15(9)(a). For claims under § 216.6A, "remedial action" is as follows:

> For the purposes of this subsection and pursuant to the provisions of this chapter "remedial action" includes but is not limited to the following:
> …
> (9) For an unfair or discriminatory practice relating to wage discrimination pursuant to section 216.6A, payment to the complainant of damages for an injury caused by the discriminatory or unfair practice which damages shall include but are not limited to court costs, reasonable attorney fees, and either of the following:
>
> > (a) An amount equal to two times the wage differential paid to another employee compared to the complainant for the period of time for which the complainant has been discriminated against.
> >
> > (b) In instances of willful violation, an amount equal to three times the wage differential paid to another employee as compared to the complainant for the period of time for which the complainant has been discriminated against.
>
> Iowa Code § 216.15(9)(a)(9)(a)-(b).

The question presented in this appeal is not whether Cianzio's administrative complaint was timely filed. The question is what remedial action Cianzio is entitled to if she successfully proves a violation of § 216.6A. The damages available in cases in which a plaintiff proves a violation of § 216.6A are mandatory and are measured using a wage differential during the period of time for which the complainant has been discriminated against. Section 216.6A defines discrimination as the payment of wages to women (or other protected classes) less than those wages paid to men for performing equal work. "[S]ection 216.6A defines discrimination as the act of paying lower wages." *Dindinger*, 860 N.W.2d at 564. Damages are calculated using a wage differential applicable during the entire period a plaintiff was paid less for performing equal work. "In determining legislative intent we look not only to the ordinary meaning of words, but particular meaning in the law. We endeavor to construe statutory language consistent with case law." *Iowa Comprehensive Petroleum Underground Storage Tank Fund Bd. v. Mobil Oil Corp*., 606 N.W.2d 359, 366 (Iowa 2000) (citations omitted). This is further supported by the fact that § 216.6A goes on to state that discrimination includes both the discriminatory pay setting decision and each time that unequal wages are paid. The above definition of remedial action for § 216.6A claims above is not ambiguous.

The District Court's application of the two-year statute of limitation in Iowa Code § 614.1(8) has no support. This statutory provision states, "Those founded on claims for wages or for a liability or penalty for failure to pay wages, within two years." Claims under § 216.6A are not founded on wages and instead are founded on a "discriminatory practice." The statute of limitations is 300 days. If Iowa Code § 614.1(8) applied to claims under § 216.6A, it would also apply to claims under § 216.6 arising out of discriminatory pay. The Iowa Supreme Court has already determined that the remedies available for discriminatory pay claims under § 216.6 are limited to damages incurred during the 300 days preceding the filing of an administrative charge.

The imposition of an arbitrary limit on the damages recoverable by a plaintiff completely undermines the purpose of the law.

> Our ultimate goal in interpreting statutes is to ascertain and give effect to the legislature's intent. To achieve that goal, we look to the object to be accomplished—the mischief to be remedied or the purpose to be served—and construe the statute so that it will best effect rather than defeat the legislative purpose.
> *Iowa Fed'n of Lab., AFL-CIO v. Iowa Dep't of Job Serv.*, 427 N.W.2d 443, 445 (Iowa 1988).

For example, in this case, if the limitation imposed by the District Court stands, Defendants will still have benefitted financially by violating § 216.6A. Defendants, when confronted with the discovery of pay discrimination, chose

not to act. If the recoverable damages are limited in the way the District Court has held, the motivation for employers to fix pay discrimination is dramatically reduced because the money saved by paying women less than men for equal work is far greater than the potential damages awarded if an employer is found to have violated § 216.6A.

"[A]n ambiguity exists only if reasonable minds could differ on the meaning. Generally, we presume words used in a statute have their ordinary and commonly understood meaning." *McGill v. Fish*, 790 N.W.2d 113, 118–19 (Iowa 2010). The District Court did not offer an alternative reasonable meaning for the phrase "wage differential during the period of discrimination" and instead only offered policy considerations for ignoring the language. The language is unambiguous and should be interpreted to mean what it says.

C. This Court in *Dindinger* Held the Recovery Period for a Violation of Iowa Code § 216.6A Is the Entire Period of Discrimination Dating Back to Enactment.

In 2015, the U.S. District Court for the Southern District of Iowa certified two questions to the Iowa Supreme Court relating to wage discrimination under the ICRA. They were:

> 1) Do Iowa Code section 216.6A, Iowa's equal pay law, and the accompanying remedial language in section 216.15(9)(a)(9), apply to permit a plaintiff to pursue wage discrimination claims under section 216.6A that accrued before April 28, 2009, the date Iowa's General Assembly made these statutes effective, in the

> absence of express legislative language making these laws retroactive?
>
> 2) If a prevailing plaintiff may only recover damages under Iowa Code section 216.6A and the accompanying remedial language in section 216.15(9)(a)(9) prospectively, may the same plaintiff also recover damages for prevailing on a wage discrimination claim under section 216.6, and if so, what types of damages may that plaintiff recover and for what period of time?
> *Dindinger v. Allsteel, Inc.*, 860 N.W.2d 557, 559 (Iowa 2015).

In response to question number 1, the Court concluded that Iowa Code § 216.6A and the corresponding remedial language in § 216.15 were prospective only and that a plaintiff could only recover the new statutory damages from the date of enactment of the section moving forward. The Court noted that the legislature, in § 216.6A, created a new cause of action for plaintiffs who had been victimized by wage discrimination and a separate damage provision applicable to those claims. "Section 216.6A of the Iowa Code therefore creates an entirely new cause of action: strict liability on the part of employers for paying unequal wages." *Id*. at 564. "The legislature simultaneously enacted a separate, enhanced remedy for violations of section 216.6A….at Iowa Code § 216.15(9)(*a*)(9)." *Id.* at 562.

In response to certified question no. 2, the *Dindinger* Court concluded "an employee can assert a wage discrimination claim under Iowa Code section 216.6. The plaintiff's lost-income recovery is based upon pay that should have been received within the 300-day limitations period set forth in Iowa Code

section 216.15(13)." *Id*. at 575–76. For the purpose of determining the timeliness of a wage discrimination complaint under § 216.6, the Court stated, "within three hundred days after the alleged discriminatory or unfair practice occurred, which is similar to the federal wording, the relevant unit of analysis is the 'discriminatory or unfair practice.'" *Id*. at 572. The Court noted that the payment of discriminatory wages is an unfair or discriminatory practice and that a claim under § 216.6 is timely filed if filed within 300 days of payment of discriminatory wages even if the discriminatory decision was made outside the 300-day period.

As part of its analysis, the Supreme Court in *Dindinger* noted that damages for a violation of § 216.6A were calculated using the entire period of discrimination.

> In 2009, the legislature provided a different statute of limitations for claims under Iowa Code section 216.6A, allowing the employee to recover 'for the period of time for which the complainant has been discriminated against.' This language appears to allow the employee to recover for the entire period of discrimination, so long as some equal pay violation occurred within 300 days of the employee's administrative complaint. But the fact that the legislature inserted this language for section 216.6A claims suggests that it did not believe the existing language in section 216.15 had that effect.[4]

[4] In the same footnote, the Court expressly differentiated between the recovery period applicable to § 216.6A claims and the recovery period for wage claims subject to the statute of limitations set forth in Iowa Code § 614.1(8). This further undermines the District Court's application of the two-year statute of limitations to Cianzio's claims.

Id. at 572.

As the Court noted in *Dindinger*, if the legislature intended the recovery period under § 216.6A to be limited to 300 days as set forth in subsection 216.15(13), the language "period of time for which the complainant has been discriminated against" would be given no meaning. The phrase could have been excluded completely if an employee's recovery was limited to the 300-day limitation set forth in § 216.15(13). "We give a plain, ordinary meaning to words, phrases, and punctuation and presume that no part of an act is intended to be superfluous." *Thompson v. Kaczinski*, 774 N.W.2d 829, 833 (Iowa 2009).

The Supreme Court in *Dindinger* also noted that the legislature essentially adopted the continuing violation doctrine for calculating damages for claims under § 216.6A and that two other states, Ohio and Tennessee, had statutorily adopted the same approach with regards to wage claims. The Court stated, "Except for the new cause of action added in 2009, the ICRA does not have language as in Ohio or Tennessee that would allow the claimant to revert to the date when the employer initially discriminated against the employee." *Dindinger*, 860 N.W.2d at 575.

Following the Supreme Court's ruling in *Dindinger*, the U.S. District Court for the Southern District of Iowa instructed the jury and the jury

awarded statutory damages dating back to July 2009, the date § 216.6A was enacted. App. 20-24. Additionally, other federal courts have concluded a plaintiff could recover statutory damages dating back to 2009 when § 216.6A was enacted. *See, e.g.*, *Lenius v. Deere & Co.*, 924 F. Supp. 2d 1005, 1015 (N.D. Iowa 2013) (concluded the plaintiff employee could recover double or treble damages dating back to 2009 when the statute was enacted).

Following *Dindinger*, other Iowa District Courts have also held that the remedies available for a violation of § 216.6A include double or treble damages during the entire period of discrimination dating back to 2009. *See, e.g.*, *Seldon v. DMACC*, Case No. LACL147358, Ruling on Summary Judgment (Polk County District Court October 1, 2021) (unpublished).

> As to the interpretation of the section 216.6A itself, when the text of a statute is plain and its meaning clear, we will not search for a meaning beyond the express terms of the statute or resort of construction….Regardless of whether footnote seven in Dindinger is binding dicta, …The Court is inclined to agree with the interpretation provided in the footnote. Therefore, the Court concludes that because the plain meaning of sections 216.15(9)(a),(b) support the interpretation that as long as one instance of discrimination was within the 300 days, the Plaintiff can bring forward a claim for the entire period.
> *Id*.

D. The Legislature Rejected an Amendment to § 216.15 That Would Limit the Recovery Period to Two Years for a Violation of § 216.6A.

In 2015, the Iowa Senate introduced Senate Study Bill 1231—"An act relating to awards of certain damages for wage discrimination claims under the Iowa Civil Rights Act." The bill was a proposed amendment to Iowa Code § 216.15(9)(a)(9) to include a paragraph that stated, "Damages shall not be awarded pursuant to this subparagraph (9) for an injury caused by a discriminatory or unfair practice that occurred more than two years prior to the filing of a complaint with the commission." https://www.legis.iowa.gov/legislation/BillBook?ba=SSB%201231&ga=86 (last accessed November 30, 2023). The legislature rejected the two-year limitation on damages and the amendment failed to pass.

First, the proposal of a two-year limitation by the senate is indicative that the section, without the amendment, does not contain a two-year limitation on the damages recovered and the District Court's ruling was erroneous. *Iowa Farm Bureau Fed'n v. Env't Prot. Comm'n*, 850 N.W.2d 403, 434 (Iowa 2014) (an amendment is presumptively a change to the law). Second, the legislature's rejection of the limitation on damages is a clear indication that the legislature does not intend for the limitation to be read into the statute. It is further evidence that the language chosen by the legislature—

"period of time for which the complainant has been discriminated against"—was intentionally chosen to effectuate the purpose of the statute. The District Court, in its ruling granting partial motion to dismiss in which it adopted a two-year limitation on the damages recovered by Cianzio, effectively legislated from the bench by imposing a limitation that the legislature itself had considered and rejected. *Beverage v. Alcoa, Inc.*, 975 N.W.2d 670, 688 (Iowa 2022) (amendment can be evidence of legislature's original intent). It is not the role of the Court to change or add to the language chosen by the legislature in enacting a statute. *Carreras v. Iowa Dep't of Transportation, Motor Vehicle Div.*, 977 N.W.2d 438, 446 (Iowa 2022) (citations omitted) ("It is not our role to 'change the meaning of a statute.'").

E. Other States Have Similar Statutes and Allow Recovery During the Entire Period of Discrimination.

This Court in *Dindinger* noted that in 2009, Iowa joined two other states, Ohio and Tennessee, that had adopted the continuing violation doctrine for wage discrimination claims under the state civil rights act. "Except for the new cause of action added in 2009, the ICRA does not have language as in Ohio or Tennessee that would allow the claimant to revert to the date when the employer initially discriminated against the employee." *Dindinger*, 860 N.W.2d at 575.

Interpretations of the Ohio and Tennessee statutes further demonstrates the limitation adopted by the District Court in this case was in error. The Ohio Supreme Court, in rejecting a one-year limitation on damages for wage discrimination, explained its decision as follows:

> The legislature clearly intended, in granting this right of recovery, to provide incentives both for employees to call for the enforcement of the statute and for employers to eliminate the prohibited discrimination. A limitation of recoveries to any wage differentials occurring within a year prior to the commencement of an action would appear to be contrary to these remedial enforcement provisions and, in the absence of a clear expression of legislative intent, we cannot so read.
> …
> [S]uch an interpretation will encourage the employer to continue violations which exceed a year in duration, for in the second year the employer will decrease the loss he will suffer …After two years of continuous violations, the employer will actually benefit from his discrimination. We have often stated that the General Assembly will not be presumed to have intended to enact laws producing unreasonable or absurd results.
> *Featzka v. Millcraft Paper Co*., 405 N.E.2d 264, 266-267 (Ohio 1980).

The Ohio Equal Pay Act is very similar to § 216.6A in that it provides a strict liability cause of action and also provides for mandatory enhanced damages. The damage provision interpreted above states:

> Any employee discriminated against in violation of this section may sue in any court of competent jurisdiction to recover two times the amount of the difference between the wages actually received and the wages received by a person performing equal work for the employer, from the date of the commencement of the violation, and for costs, including attorney fees. … Any

> action arising under this section shall be initiated within one year after the date of violation.
> Ohio Rev. Code § 4111.17.

The Ohio statute, allowing for double damages during the entire period of discrimination, was already in effect at the time Iowa enacted § 216.6A.

Like Iowa and Ohio, Tennessee also allows recovery during the entire period of discrimination. The Tennessee Supreme Court explained:

> We do not hold that a single discriminatory paycheck does not constitute a discriminatory act. It does. But in our view, a discriminatory pay rate, whether it occurs for two weeks, two years, or more, constitutes precisely the type of continuing violation envisioned by the Legislature in enacting the THRA's statute of limitations. …A discriminatory pay rate is actionable until it "ceases." It does not cease each time an employee receives a paycheck. Rather, it ceases when the employer brings the employee into parity with his or her peers.
> *Booker v. The Boeing Co.*, 188 S.W.3d 639, 648 (Tenn. 2006).

As the above cases show, Iowa's enactment of a statute providing for enhanced damages measured by the entire period of discrimination was intentional to advance the purpose of the statute and not simply an oversight that has created an ambiguity as the District Court held.

CONCLUSION

Plaintiff-Appellant Silvia Cianzio respectfully requests that this Court overrule the District Court's grant of partial motion to dismiss limiting Cianzio's recovery to two years preceding the filing of her administrative complaint and order that Plaintiff Cianzio is entitled to pursue claims for

violation of Iowa Code § 216.6A dating back to July 10, 2009, the date on which Iowa Code § 216.6A went into effect.

REQUEST FOR ORAL ARGUMENT

Pursuant to Iowa Rule of Appellate Procedure 6.903(2)(i) and Rule 6.908, Plaintiff-Appellant respectfully requests that the Court set this matter for oral argument.

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CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(g)(1) because this brief contains 7,686 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1). This brief complies with the typeface requirements of Iowa R. App. P. 6.903(1)(e) and the typestyle requirements of Iowa R. App. P. 6.903(1)(f) because This brief has been prepared in a proportionally spaced typeface using Microsoft Word in Times New Roman, size 14.

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STATEMENT OF COSTS

The undersigned certifies that the cost for printing and duplicating paper copies of this brief was $0.00.

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CERTIFICATE OF FILING AND SERVICE

I certify that I filed this Brief with the Clerk of the Iowa Supreme Court using the Iowa Electronic Document Management System on March 5, 2024.

I further certify that on March 5, 2024, a copy of the Brief was served using EDMS pursuant to Iowa R. App. P. 6.701 to:

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