THE SUPREME COURT OF IOWA

Supreme Court No. 24-0189

Polk county No. EQCE089390

MICHAEL CHANDLER, EDDIE JONES, and CHAD MADDISON,
on behalf of themselves and all other similarly situated,

Plaintiffs-Appellants

vs.

IOWA DEPARTMENT OF CORRECTIONS,

Defendant-Appellee

APPEAL FROM THE IOWA DISTRICT COURT FOR POLK COUNTY

THE HONORABLE COLEMAN MCALLISTER

PLAINTIFF-APPELLANT REPLY BRIEF

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ARGUMENT

I. BY STATING OFFICERS "SHALL HAVE THE RIGHT TO BRING A CAUSE OF ACTION" THE LEGISLATURE CLEARLY STATED ITS INTENT

Defendant asks this Court to suspend logic and ignore the text of the statute. When the legislature determined that an officer "shall have the right to bring a cause of action against any person . . . for damages arising from . . . any other violation of this chapter," they meant exactly that. An officer can bring suit for violations of Chapter 80F.1 against any entity that violates the officer's rights. *See Neal v. Annett Holdings, Inc.*, 814 N.W.2d 512, 519 (Iowa 2012) ("When interpreting a statute, we will not look beyond the express terms of the statute if the text of the statute is plain and its meaning is clear.").

A. SECTION 80F.1(13) CREATES A PRIVATE RIGHT OF ACTION

Section 13 of the Peace Officers Bill of Rights was rewritten by the legislature's 2021 amendments. Ignoring this fact, Defendant repeatedly cites cases interpreting the pre-amendment statute and pre-amendment code legislature history.

Plaintiffs acknowledge that the pre-amendment legislative history, as well as the then-correctly-decided *Dautovic* decision, support the conclusion

that the pre-amendment statute did not create a private right of action. The statute at the time stated that an officer could pursue "civil remedies under the law." This provision was properly interpreted as a savings provision. *Dautovic v. Bradshaw*, No. 09-1763, 2011 WL 1005432 (Iowa Ct. App. March 21, 2011). However, that language was replaced by the 2021 amendments. Officers now have "the right to bring a cause of action[.]" The phrase "under the law" was completely eliminated, demonstrating that the new Section 80F.1(13) is no longer merely a savings provision. Instead, a new cause of action was created. *C.f. Dautovic*, 2011 WL 1005432 at *2.

B. AN OFFICER'S EMPLOYER IS AN APPROPRIATE DEFENDANT

Defendant advances a number of reasons why an employer is not an appropriate defendant for a Section 80F.1(13) action. None of the arguments are persuasive. First, the doctrine of *ejusdem generis* does not apply. Second, adopting Defendant's crimped definition of the word "person" ignores the basic rule that the legislature may act as its own lexicographer. Finally, interpreting the statute to exclude employers leads to absurd results and renders other words in the statute superfluous.

1. The legislature intended that violations of Chapter 80F.1 give rise to a cause of action, and the doctrine of *ejusdem generis* does not change this conclusion

The attempt to use the doctrine of *ejusdem generis* is not appropriate in this case. Defendant argues that this doctrine limits the basis for a cause of action to only "false complaints" and does not allow suit for other violations of Chapter 80F.1; despite explicit language to the contrary. However, the clause stating that officers have a cause of action for "any other violation of this chapter" shows, in black and white, that an officer may sue for other violations of Chapter 80F.1

The doctrine of *ejusdem generis* "provides that when general words follow specific words in a statute, the general words are read to embrace only objects similar to those objects of the specific words." *Teamsters Local Union No. 421 v. City of Dubuque*, 706 N.W.2d 709, 715 (Iowa 2005). "In using the doctrine as an interpretative aid, it is important to keep in mind that it is not applied in a vacuum, and disputes cannot be resolved by merely tying the issue 'to the procrustean bed of ejusdem generis.'" *Id.* Five conditions must be identified before the doctrine applies:

> (1) the statute contains an enumeration by specific words; (2) the members of the enumeration suggest a class; (3) the class is not exhausted by the enumeration; (4) a general reference supplementing the enumeration, usually following it; and (5) there is not clearly manifested an intent that the general term be given a broader meaning than the doctrine requires.

Id. at FN 5 (quoting *United States v. Weadon*, 145 F.3d 158, 162 (3rd Cir. 1998).

Defendant's attempt to apply *ejusdem generis* fails on multiple grounds using the above-test. First, the statute does not contain an enumeration of the types of harms for which an officer may bring an action. Instead, an officer may bring an action "for damages arising from the filing of a false complaint against the officer or any other violation of this chapter[.]" The only harm specifically identified is the filing of a false complaint. Identifying a single harm is not an enumeration. The word "enumeration" means "the act or process of making or stating a list of things one after another." *Enumeration*, Merriam-Webster (Online Edition). The legislature did not create a list, but instead mentioned a single thing—the filing of a false complaint—and then stated that an officer may sue for any other violation of this chapter.

Refusing to apply *ejusdem generis* in this case is consistent with this Court's prior decisions limiting application of the doctrine to those times when the legislature's mentions two or more items followed by the general term. *See e.g. Teamsters Local Union No. 421*, 706 at 714 (statute listed "police officers, fire fighters and other critical municipal employers . . ."); *Maxim Technologies v. City of Dubuque*, 690 N.W.2d 869, 902 (Iowa 2005)

(holding "in light of the preceding string of terms 'remedial action,' cleanup,' and 'uninhabitability,' use of the subsequent phrase 'or other property damage upon which Maxim in part relies, can only be understood to be intended to refer to the same subject matter as the string of terms, only with added flexibility."). The undersigned was unable to locate any cases where the doctrine was applied to a statute like 80F.1(13) where the legislature did not list multiple items.

Defendant's argument for the use of *ejusdem generis* fails on other grounds. Because there is no list of terms, the term "false claim" does not suggest a class. (second element) And as discussed below, the use of the phrase "or other violations of this chapter" manifests a legislative intent that this term be given a broader meaning. (fifth element) The clause "or other violations of this chapter" is not a general term restricted to things related to false claims. It specifically states that violations of the chapter can be the basis for a cause of action. Moreover, the context of the addition of this language is important. The 2021 amendments added the clause "or other violations of this chapter," which strongly suggests this term has a meaning independent of, and in addition to, "the filing of a false claim."

The doctrine of *ejusdem generis* simply does not apply. The terms of the statute should be given their plain meaning: officers may bring suit for violations of Chapter 80F.1.

2. Because the legislature has defined "person", the Court is bound by that definition

This Court has long recognized that "the legislature may act as its own lexicographer. When it does so, we are normally bound by the legislature's own definitions." *The Sherwin-Williams Co. v. Iowa Dept. of Revenue*, 789 N.W.2d 417, 425 (Iowa 2010). "[T]his court is obligated to apply the statutory definition of [person] as written, absent an ambiguity in that definition." *See id.*

Section 4.1(20) defines the term "person" to expressly include the "government or governmental subdivision or agency." Iowa Code § 4.1(20) (2023). Accordingly, a government agency, like the Department of Corrections, is a person and an appropriate defendant in a 80F.1 cause of action.

Defendant's only argument against this logical outcome is that 80F.1(13) also lists a "corporation" as an appropriate defendant. Because Section 4.1(20) also includes corporations in the definition of "person," Defendant argues that "person" must mean something different. Defendant fails to provide any indication what the something different might be, but

seemingly suggest that a "person" under 80F.1 can only mean a nature person.

Defendant's suggested interpretation of the statutory language leads to absurd results. *See State v. Iowa Dist. Court for Black Hawk County*, 616 N.W.2d 575, 578 (Iowa 2000) (holding "the court interprets statutes so as to avoid absurd results"). Adopting Defendant's argument would mean the list of entities in 80F.1(13) against whom suit can be brought is exclusive and does not include the entities defined in Section 4.1(20). For example, under Defendant's reading an officer could sue a corporation because such an entity is specifically enumerated in 80F.1(13), but could not sue an LLC, a partnership, or a sole proprietorship because they are not. There is no logical explanation why the legislature would make such a distinction.

Interpreting "person" to exclude an officer's employer would also render the phrase "or other violations of this chapter" superfluous. Besides the filing of a false complaint, virtually all the potential violations of Chapter 80F.1 can only be committed by an employer. Below is a non-exhaustive list of officer rights (secured by Section 80F.1) that can only be enforced against an employer:

- Section 80F.1(3) requires that formal administrative investigations be completed in a reasonable period of time and that the officer is immediately notified of the results;

- Section 80F.1(5) allows an officer to examine a written copy of a complaint against them prior to an interview;
- Section 80F.1(6) requires that officers being interviewed be advised that their answers shall not be used against the officer in a criminal proceeding;
- Section 80F.1(7) requires that interviews of officers be audio recorded;
- Section 80F.1(8) allows officers to have legal counsel or a union representative present during interviews;
- Section 80F.1(9) allows officers access to the investigative file if an officer is removed, discharged, suspended, or disciplined;
- Section 80F.1(11) requires an officer to be compensated if an interview is conducted while the officer is off-duty;
- Section 80F.1(16) prohibits an officer from being discharged, disciplined or threated with discharge or discipline for exercising their rights under Section 80F.1;
- Section 80F.1(18) prohibits an officer's employer from publicly releasing an officer's photograph without his permission.

If "person" does not include the employer, the officer's ability to bring a cause of action for "any other violation of this chapter" becomes meaningless. Defendant's argument ignores these absurd results.

The legislature's decision to expand the list of additional defendants subject to a 80F.1 cause of action demonstrates an intent to broaden the scope of responsible parties, not limit it. The legislature included "group[s] of persons" and "organization[s]" in its list of appropriate defendants. Iowa Code § 80F.1(13)(2023). These entities are not included in the definition of "person" in section 4.1(20), and as such evince a clear legislative intent to

broaden the reach of Section 80F.1(13). Adopting Defendant's narrow interpretation is inconsistent with this legislative directive.

Finally, the fact that the legislature used the term "employing agency" in other parts of the statute does not mean that the term "person" means something other than how it is defined in Chapter 4. The terms are not interchangeable, and a brief reading of the statute shows why. It makes no sense for the legislature to state that a "person" may not release "an officer's official photograph", since only the officer's agency would be in possession of that photograph. *See* Iowa Code § 80F.1(18) (2023). Similarly, only an officer's employer could "hold in abeyance for a period of ten days any punitive action taken as a result of the investigation, including a reprimand." *See* Iowa Code § 80F.1(19)(2023). It is a stretch to argue that the legislature's use of the term "employing agency" in other parts of the statute means that "person" does not include an officer's employer.

II. CHAPTER 17A IS NOT THE EXCLUSIVE MEANS OF SEEKING REDRESS WHERE ANOTHER STATUTE PROVIDES A CAUSE OF ACTION

This Court has definitively ruled on the issue of whether Chapter 17A's exclusive remedy language applies to a statute which expressly creates a cause of action. It does not. *See Walsh v. Wahlert*, 913 N.W.2d 517, 525 (Iowa 2018). *Walsh* held:

A final issue is raised by the provisions of Iowa Code section 17A.19 (2014), which provides that

> [e]xcept as expressly provided otherwise by another statute referring to this chapter by name, the judicial review provisions of this chapter shall be the exclusive means by which a person or party ... may seek judicial review of such agency action.

We have held that the remedies provided by Iowa Code chapter 17A are exclusive for common law remedies. *Salsbury Labs. v. Dep't of Envtl. Quality,* 276 N.W.2d 830, 835 (Iowa 1979). And statutes which merely declare that decisions of an administrative body are final are subject to challenge through judicial review of agency action. *Polk County v. Iowa State Appeal Bd*., 330 N.W.2d 267, 276 (Iowa 1983).

Here, however, is an unusual case in which we have a statute that expressly creates an independent cause of action in the alternative to administrative remedies under Iowa Code chapter 17A. While common law claims and claims under statutes that merely authorize, structure, or limit agency actions must be challenged through judicial review of agency actions pursuant to Iowa Code chapter 17A, the remedies under statutes where the legislature has expressly created independent statutory causes of action in the alternative to **chapter 17A-type review**, judicial review of agency action under the administrative procedures act is not the exclusive means of obtaining judicial review. **To hold otherwise would eliminate a choice of remedies that the legislature expressly created.** (emphasis added)

Application of *Walsh* to this case is simple. Just as in *Walsh*, Section 80F.1(13) creates an independent cause of action. To hold that an officer may not use Section 80F.1(13) to file a cause of action would eliminate the choice of remedies the legislature expressly created.

This conclusion is bolstered by the text of Chapter 80F.1. As noted in Plaintiffs' opening brief, Section 80F.1(19) states that an officer "may" pursue his administrative remedies. This is virtually identical to Chapter 70A.28 which states that a whistleblower rights "may also be enforced by an employee through an administrative action[.]" Just like in *Walsh*, it is clear that the legislature intended to create an independent cause of action by enacting new Section 80F.1(13).

Defendant argues that an "unusual case" (as that phrase was used in *Walsh*) is not present because 80F.1(13) contains no explicit reference to 17A and a private cause of action would render the administrative grievance process available under 80F.19 superfluous. The argument only underscores the similarity to *Walsh*. An aggrieved officer has the choice of remedies created by the legislature. He/she may bring a cause of action for removal, discharge or suspension or other disciplinary action in district court pursuant to 80F.1(13). Alternatively, the officer's claims "may be raised and given due consideration" in a grievance or appeal pursuant to Iowa Code §§341A.12 or 400. Iowa Code §80F.1(19).

Moreover, the administrative "remedies" available in Section 80F.1(19) are not adequate. Administrative remedies are not required to be exhausted if they are not adequate. *See Bonilla v. Iowa Board of Parole*, 930

N.W.2d 751, 765 (Iowa 2019) (holding "Two conditions must be met before we apply the doctrine: an adequate administrative remedy must exist for the claimed wrong, and the governing statutes must expressly or impliedly require the remedy to be exhausted before allowing judicial review."). The administrative remedies in 80F.1(19) merely require an employer to hold a decision in abeyance for 10 days and that the violation of Chapter 80F.1 will be considered in an administrative appeal. There is no mechanism for actually enforcing the provisions of chapter 80F.1, nor any repercussions for violating the statute. The remedy is entirely inadequate and provides no incentive for the employer to comply with the statute.

Without explanation, Defendant interprets the term "may" in Section 70A.28 completely differently than in Chapter 80F.1. Defendant asserts that the use of "may" in Section 80F.1(19) means an officer can choose between "pursuing the administrative processes set forth and doing nothing." (Def. Brief p. 47) Such a Hobson's Choice[1] finds no support in the statute or this Court's jurisprudence. Defendant fails to cite a decision of this Court (or any other Court) in support of this unique interpretation. The argument is reminiscent of a far less reputable judicial source—Judge Smails from the

[1] Merriam-Webster defines Hobson's choice as "an apparently free choice when there is no real alternative."

1980 film *Caddyshack* whose mantra included the comedic gem: "You'll get nothing, and like it!"[2]

III. PLAINTIFFS HAVE STANDING TO BRING THEIR CLAIMS

Defendant next argues that Plaintiffs do not have standing to bring suit because they have not been harmed. This argument ignores the text of Section 80F.1, in particular that Plaintiffs are entitled to "actual damages." The Amended Petition clears up any ambiguity on this point. D0011, Plaintiffs' Amended Petition at ¶¶ 27, 34, 44, 49 (11/3/2023). Finally, Defendants' argument regarding standing for filing suit under Chapter 80F.1(9) would effectively result in absolute immunity which is completely at odds with the intent of amended Chapter 80F.

Just like section 80F.1(13), the Iowa Civil Rights Act allows a plaintiff to collect "actual damages" for violation of their rights. Section 216.15(9)(a)(8) defines the damages available to a plaintiff as "damages for an injury caused by the discrimination or unfair practice which damages shall include but are not limited to actual damages, court costs and reasonable attorney fees." (emphasis added). This language mirrors the language from Chapter 80F.1(13): "including but not limited to actual damages, court costs, and reasonable attorney fees."

[2] https://www.imdb.com/title/tt0080487/characters/nm0461095

This Court has, on many occasions, considered and defined the damages available under the ICRA and held that "actual damages" are analogous to "compensatory damages." *Chauffeurs, Teamsters and Helpers, Local Union No. 238 v. Iowa Civil Rights Com'n*, 394 N.W.2d 375, 382-83 (Iowa 1986). *Chauffeurs* held that emotional distress damages falls under the umbrella of compensatory damages. *Id*. Subsequent decisions make it clear that in cases alleging intentional or illegal conduct a "plaintiff need not show physical injury, outrageous conduct or severe distress to obtain an award for emotional distress under the ICRA." *Dutcher v. Randall Foods*, 546 N.W.2d 889, 894 (Iowa 1996) (citing *Hy-Vee Food Stores, Inc. v. Iowa Civil Rights Com'n*, 453 N.W.2d 512, 525-26 (Iowa 1990).

Just like a violation of the Iowa Civil Rights Act, a violation of Chapter 80F is a violation of a statute. *See Hy-Vee Food Stores, Inc.*, 453 N.W.2d at 525-26. And just like a violation of the Iowa Civil Rights Act, Defendant's violations of Chapter 80F are intentional. *See id*.; D0011, Plaintiffs' Amended Petition ¶¶ 24, 28 and 37 (11/03/2023). Accordingly, Plaintiffs do not need to "show physical injury, outrageous conduct or severe distress to obtain an award for emotional distress under" Chapter 80F. *See, Dutcher*, 546 N.W.2d at 894.

Plaintiffs have alleged that they suffered emotional distress from the denial of their rights. D0011, Plaintiffs' Amended Petition at ¶ 49 (11/03/2023). Accordingly, they have alleged and ultimately will prove that they suffered compensable injuries as a result of Defendant's conduct. This is sufficient to show injury and confer standing.

Finally, Defendant's argument that Plaintiff's lack standing because they should have requested their investigative files at the grievance or appeal level completely misses the mark and will only embolden government employers to flaunt the statutory rights of officers protected by chapter 80F. The purpose of this lawsuit is to stop the Department of Corrections (and other agencies covered by 80F) from refusing to follow the statute by timely providing investigative files following a removal, discharge or suspension. Section 80F.1(9) provides:

> If a formal administrative investigation results in the removal, discharge or suspension, or other disciplinary action against an officer, copies of any witness statements and **the complete investigatory agency's report shall be timely provided** to the officer upon request of the officer or the officer's legal counsel upon request **at the completion of the investigation.** (emphasis added).

All three Plaintiffs allege that after being disciplined they requested copies of their investigative files. D0011, Plaintiffs' Amended Petition at ¶ 23, 31, 41(11/03/2023). The investigative files should have been

immediately provided upon request. Instead, Defendant blatantly disregarded the statute and told all three Plaintiffs that their investigative files would not be provided until a grievance or appeal was filed. D0011, Plaintiffs' Amended Petition at ¶24-25, 32, 41-42, 47-48 (11/03/2023)

The purpose of this class action lawsuit is to stop the Department of Corrections from forcing "officers" to file an administrative appeal or grievance in order to obtain documents that by statute should be immediately provided upon request. Indeed, if an aggrieved officer is timely given his investigative file he/she is in a better position to make an informed decision about how next to proceed. There may be instances where the officer, upon review of the investigative file, simply drops the matter and goes no further. On the other hand, after reviewing the evidence (or lack thereof) in the investigative file, an officer can exercise his statutory right to either file suit under 80F.1(13) or opt for an administrative appeal pursuant to 80F.1(19).

The Department of Corrections does not have the right, statutory or otherwise, to simply deny the request for an investigative file and hold the documents until a grievance or appeal is filed. This is exactly what happened to Plaintiffs. Their statutory rights have been blatantly disregarded and as a result they have sustained injury.

CONCLUSION

Plaintiff-Appellants respectfully request that the District Court's Ruling on Defendant's Pre-Answer Motion to Dismiss be reversed and the matter be remanded to the trial court for further proceedings.

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CERTIFICATE OF FILING AND SERVICE

I certify that on **May 31, 2024** I electronically filed this Reply Brief with the Clerk of Court using the ECF system, which sent notification of same to:

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CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that:

1. This brief complies with the type-volume limitation of Iowa R. of App. P. 6.903(1)(g)(1) because this brief contains 3,553 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1) (table of contents, table of authorities, statement of issues and certificates).

2. This brief complies with the typeface requirements of Iowa R. App. P. 6.903(1)(e) and the type-style requirements of Iowa R. App. P. 6.903(1)(f) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2010 in Times New Roman 14 pt.

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